

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 316 of 2013 (O&M)
Date of decision : January 14, 2016

Kalawati

..... Petitioner

Versus

Saroj Rani and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Ahluwalia, Advocate
for the petitioner.

Mr. Brijender Kaushik, Advocate
for respondent No.1.

Mr. C. S. Singh, Advocate for
Mr. G. S. Hooda, Advocate
for respondent No.2.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the order dated 11.12.2012 whereby the application seeking amendment of the pleadings by incorporating the plea of mandatory injunction being a subsequent event, as during the pendency of the suit the respondent-defendant had closed the window, sought to be enjoined by way of permanent injunction, has been declined.

Mr. R. S. Ahluwalia, learned counsel appearing on behalf of the petitioner submits that the trial court dismissed the application in a most erroneous and fallacious manner, inasmuch as that, defendant in paragraph 4 of the written statement made a categorical statement that the construction had already been raised

and the suit was filed in the year 2008, therefore no cause of action survived. In paragraph 4 of the written statement reproduced at page 8 of the paper book the defendants had categorically pleaded that they are raising construction as per site plan sanctioned by the Municipal Committee, thus, it being a subsequent event amendment sought to be incorporated seeking mandatory injunction, is essential and necessary for adjudication of the suit.

Mr. Brijender Kaushik, learned counsel appearing on behalf of respondent No.1 submits that there is no illegality and perversity in the order. The suit had been filed in 2008 and the application had been moved at the stage when the suit was listed for defendant's evidence.

Mr. C.S. Singh, learned counsel appearing on behalf of respondent No.2 submits that the primary dispute is between the plaintiff and defendant No.1. Defendant No.2 has been arrayed as a party as defendant No.1 has got the plan sanctioned from it.

I have heard learned counsel for the parties and appraised the paper book.

The trial court in my view, has committed illegality and perversity in declining the application by holding that it was filed at a highly belated stage whereas in paragraph 4 of the written statement the defendant had categorically pleaded that they are raising construction as per the site plan. Paragraph 4 of the written statement is reproduced hereinbelow:-

“Para No.4 of the plaint is correct to the extent that

the answering defendant is raising the construction over his house as per the site plan sanctioned by the defendant No.2. It is wrong that answering defendant is threatening to encroach/close the window existing on the wall of the plaintiff house by way of encroachment or by way of constructing chajja/hanging without getting the permission from the defendant No.2. It is apt to mention here that the answering defendant is raising the construction as per the sanctioned site plan and never violated/bypass the terms and conditions of the construction of the house as per provisions of the M.C.Kalka. It is apt to mention here that the window of the house of the plaintiff is constructed on the projection which is illegal as per provisions of the M.C.Kalka and the plaintiff has covered the projection in order to extend the first floor of the house. It is apt to mention here that the privacy of the house of the answering defendant is interrupting as the same exists towards the house of the answering defendant.”

The law with regard to the amendment of the plaint by incorporating the subsequent event is most liberal and unambiguous, in case a subsequent event has arisen and the plaintiff does not seek this amendment, the plaintiff would be facing difficulty at the final stage of the suit, in the absence of appropriate relief.

I am of the view that the amendment sought is most innocuous and would not pre judice the parties, rather, it would help the Court in adjudicating the matter between the parties to the *lis*.

Keeping in view the aforementioned facts, the impugned order declining the application seeking amendment of the plaint is hereby set aside. The application seeking amendment of the plaint is allowed.

The revision petition is accordingly allowed.

(AMIT RAWAL)
JUDGE

January 14 , 2016
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