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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.4895 of 2016 (O&M)

Date of Decision: 16.08.2016

BALJEET SINGH AND ORS.

.....Petitioners

Vs

KRISHAN KUMAR

....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Saqib Ali Khan, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioners have assailed order dated 24.05.2016 (Annexure P-4) vide which amendment of plaint was allowed by the Additional Civil Judge (Sr. Divn.) Nabha.

[2]. Plaintiff filed a suit for permanent injunction along with application under Order 39 Rules 1 and 2 CPC. The application for interim injunction has already been decided by the trial Court. It was that averred after decision of application for temporary injunction, defendants have illegally encroached upon the passage thereby blocking the same.

[3]. Plaintiff also alleged that on account of such merger of passage in the property of defendants, passage to his property

stood blocked. By way of amendment of the plaint, plaintiff intended to add relief of mandatory injunction directing the defendants to remove the encroachment made on the passage and to restore the same in its original position by removing the encroachment from point A to b and B to C. Additional para No.2-A in the plaint after para No.2 was sought to be added along with addition in paras No.8 and 9. Prayer clause of the plaint was also sought to be amended, thereby including prayer of mandatory injunction.

[4]. Plaintiff pleaded that the construction was raised by the defendants in the month of July 2015 and that has necessitated in moving the application under Order 6 Rule 17 CPC for amendment of the plaint. The amendment is not be hit by the interim order passed under Order 39 Rules 1 and 2 CPC, since prayer for mandatory injunction emanates from the main prayer made in the suit itself.

[5]. The action of the defendants to encroach upon the *rasta* during pendency of suit necessarily gave rise to cause of action in favour of the plaintiff which in any case cannot be held to an act of changing the nature of the suit. Anything done during pendency of the suit can be taken note of by the civil Court, even by way of judicial notice. The ingredients of Order 6

Rule 17 CPC are squarely attracted as the amendment in question would be necessary to enable the Court to pronounce the order in a just and effective manner. Even by way of amendment, multiplicity of litigation would be saved.

[6]. In considered opinion of this Court, the impugned order is not faulted with any jurisdictional error. Consequently, this revision petition is dismissed.

August 16, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No