

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5522 of 2015

Date of Decision: 31.03.2016

Om Parkash

... Petitioner(s)

Versus

Sahi Ram Jaat Ramyana Wala and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

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| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Shalender Mohan, Advocate
for the petitioner(s).

Mr. Vikas Mohan Gupta, Advocate
for the respondent(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 7.8.2015, passed by learned Civil Judge (Junior Division), Hansi, whereby application for amendment of plaint, filed by the plaintiff under order 6 Rule 17 CPC, was dismissed.

Learned counsel for the petitioner submitted that civil suit for mandatory injunction in respect of plot measuring 62 square yards was filed and injunction was sought to restrain the defendants from making any further encroachment or raising any construction upon the

wall of the petitioner which remains 9”.

Respondents contested the suit and after settlement of issues, the parties led their respective evidence and the case was fixed for rebuttal evidence, if any and arguments and at that stage, application for amendment of the plaint was filed by the present petitioner and plaintiff wanted to add the following words:-

"That the illegal encroachment which has been done by the defendants over the plot of the plaintiff should be removed by the order of the Court."

The Court below dismissed the application after considering the rival contentions of both the parties vide impugned order.

Learned counsel for the petitioner submitted that by way of proposed amendment, petitioner/plaintiff just wanted to take the plea that illegal encroachment, which has been done during pendency of the suit, is required to be removed and he is not to lead any evidence in support of amended pleadings.

Learned counsel for the respondents submitted that the Court below has rightly dismissed the application because it was filed when the case was fixed for rebuttal evidence, if any and arguments and prayed that present petition be dismissed.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that the applicant/petitioner has taken the plea that illegal encroachment, which has been done by the defendants over the plot of the plaintiff should be removed. The main suit was for

mandatory and prohibitory injunction. Application for amendment of the plaint has been filed at the fag end of trial when both the parties have already led their respective evidence. The amended provisions of Order 6 Rule 17 CPC read as under:

"Order 6 Rule 17. Amendment of pleadings.-

The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

The above referred provision makes it ample clear that amendment of pleadings is not permissible after commencement of trial. The only exception is that:

- 1) That despite due diligence, the party could not have raised the matter before the commencement of trial.
- 2) The same may be necessary for the purpose of determining real question of controversy.

However, both the points in the present case are against the petitioner because the application has been filed after commencement of the trial

and more so, at the fag end of trial. Both the parties have already led their respective evidence. Such a view was taken by Hon'ble the Supreme Court in case ***Ajendraprasadji N. Pande and Another v. Swami Keshavprakeshdasji N. and Others 2007(1) RCR (Civil) 481*** and also by this Court in cases Arjun ***Chand v. Smt. Shama Joshi 2011(2) RentLR 55, Sunil and Others v. Jai Prakash and Another 2013(1) PLR 465*** and ***Mahender Singh Tehlan and Another v. Nirmla Devi and Others (Civil Revision No. 3913 of 2013, decided on 15.7.2013)***.

In view of above, the Court below has rightly dismissed the application. Thus, there is no merit in the present petition and the same stands dismissed.

(Shekher Dhawan)
Judge

March 31, 2016

"DK"