

Civil Revision No.5515 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.5515 of 2016

Date of Decision: 29.8.2016

Satto Devi and another

--- Petitioners

versus

Ishwar Chand and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Rajinder Singh Rana, Advocate
for the petitioners**

Rekha Mittal, J.

The present petition has been directed against order dated 18.7.2016 (Annexure P-7) passed by the Additional Civil Judge (Senior Division), Kurukshetra, whereby application filed by the plaintiff (respondent No. 1) for amendment of the plaint, has been allowed.

The respondent/plaintiff namely Ishwar Chand filed a suit for

permanent injunction restraining the defendants including the petitioners from raising construction on the portion marked as 'ABCD' depicted in red colour in the site plan annexed with the plaint, stated to be a *rasta*. The instant application was filed by the respondent /plaintiff on the allegations that on 29.10.2015, in violation of the stay order, the respondents started construction on the gair mumkin rasta and raised a wall to the extent of 7" height and a contempt petition has also been filed by the applicant against the respondents and as a consequence, he sought amendment of the plaint to add the relief of mandatory injunction and sought addition of para No. 3-A and in other paras, detailed in para 5 of the application.

Counsel for the petitioners would submit that the allegations sought to be raised by way of amendment that the petitioner has raised construction of a wall on the alleged disputed rasta on 29.10.2015 are patently false, therefore, the respondent cannot be allowed to amend the plaint.

I have heard counsel for the petitioners, perused the paper book particularly the order impugned.

It is an undisputed position in law that at the stage of deciding an application for amendment of the pleadings, the Court cannot examine

merits of the facts sought to be added by way of amendment. In this view of the matter, plea of the petitioners that the allegations sought to be raised by way of amendment are false, cannot be taken as sufficient to find an error much less illegality in the impugned order.

No other point has been raised.

In view of what has been discussed hereinbefore, the petition fails and is accordingly dismissed. However, nothing stated in this order shall be construed as an expression of opinion on merits of the facts pleaded in the amended plaint.

(Rekha Mittal)
Judge

29.8.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No