

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

**Civil Revision No.5577 of 2016
Date of Decision: 30.08.2016**

Ram Chand and another

.....Petitioners

Vs

Hari Parkash and others

.....Respondents

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

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

RAJ MOHAN SINGH, J

1. Petitioners have assailed the order dated 4.8.2016 passed by Civil Judge (Jr. Divn.), Faridabad, whereby application under Order 6 Rule 17 CPC for amendment of plaint was declined.

2. Petitioners alleged that at the time of preparation of arguments, learned counsel came to know that due to typographical mistake, boundaries of the disputed property were wrongly mentioned as Northern and Eastern, in fact, the verandah and room were constructed on the Northern side and Western side. In order to seek correction, amendment was sought.

3. The amendment was opposed by the respondents on the ground that the suit was filed on or about 30.9.2011. In the plaint, it was specifically pleaded that the defendants have encroached some portion of the suit property towards Northern and Eastern side and have raised some construction in the shape of one room and verandah. Written statement was filed, whereby allegations in the plaint were denied. Issues were framed on or about 14.1.2015. Both the parties have already led their evidence. The case was at the stage of rebuttal and arguments. At this stage, the application in question came to be filed.

4. Trial Court dismissed the application on the premise that the acceptance of application at such a stage would result in *de novo* trial and re-opening of the case, which is not permissible in law. A new cause of action would be substituted for old prayer.

5. Learned counsel for the petitioners has vehemently argued that in view of para 2 of the plaint, the pleadings are in the following manner:-

“That the defendants being strong headed and reckless persons encroached some portion of the suit property towards Northern and Eastern portion and raised some construction in the shape of one room and a verandah illegally unlawfully and forcibly in the

year 2001. In fact, the defendants have no right, title or interest to raise the construction over the suit property. The plaintiffs got demarcation over the suit property on 24.6.2001 and the said fact came to the knowledge of the plaintiff that the defendant have encroached the portion of the suit property by way of raising construction of one room and a verandah, illegally and unlawfully.”

In the prayer clause, following prayer was made:-

“It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to pass of decree for possession regarding the property in suit i.e. regarding the encroached portion as shown in the report dated 24.6.2011 given by the Kanoongo being Local Commissioner and as fully shown in the site plan shown in red colour, may kindly be passed in favour of the plaintiffs and against the defendants, directing the defendants to remove the structure i.e. one room and a verandah from the suit property and to hand over the peaceful possession of the encroached portion of the suit land, in the interest of justice.

Any other relief, which this Hon'ble Court deems fit and proper may also be awarded in favour of the

plaintiffs and against the defendants.

It is further prayed that a decree for permanent injunction restraining the defendants from encroaching any other portion over the suit property i.e. the vacant portion or from raising any sort of construction in any manner in vacant portion of the suit property may kindly be passed in favour of the plaintiffs and against the defendants, in the interest of justice.”

6. I have considered the submissions made by learned counsel for the petitioners.

7. A perusal of the pleadings in terms of para No.2 of the plaint, coupled with the statements of plaintiffs' witnesses in their examination-in-chief, would reveal that categorical pleadings were made by the plaintiffs' witnesses that encroachment of portion of the suit property was towards Northern and Eastern portion. Now change in dimension in respect of alleged encroachment on Northern-Western portion would lead to total change in configuration of the suit property. The plaintiffs' witnesses have already been examined and they have been cross-examined as well. Defendants have also led their evidence and their witnesses have also been cross-examined. At this juncture, acceptance of application for amendment would lead to *de novo* trial and would add destructive plea in the plaint.

In the event of acceptance of such application, there will be fresh trial.

8. It is mandatory on Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The Court should not record any finding on merits of the amendment. The merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer of amendment.

9. Rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest of doing complete justice to the parties. All *bona fide* amendments necessary for determining issue between the parties should be allowed. First part of Rule 17 CPC gives direction to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

10. Learned counsel for the petitioners relied upon **Mahila Rarnkali Devi and others vs. Nandram (d) through LRs and others 2015 (5) RCR (Civil) 562** to contend that the Court should lean in favour of amendment unless it is proved

that the amendment sought is mala fide or has caused injury to the opponent which cannot be compensated by adequate costs.

11. In the instant case, the pleaded case of the plaintiffs was categoric in terms of dimensions of the alleged encroachment and the same was stated to be towards Northern and Eastern portion. The plaintiffs' evidence i.e. statements of witnesses in examination-in-chief would show that the same stand was taken by all the witnesses in their examination-in-chief. The defendants have denied the alleged fact of encroachment by them. Plaintiffs staked amendment in plaint only by virtue of report of the Local Commissioner dated 24.6.2011 which, in considered opinion of this Court, was not sufficient in view of positive narration of facts given in the body of plaint. Local Commissioner was not supposed to collect evidence for either of the party nor the same can be made basis for such an amendment in the absence of proof regarding veracity and admissibility of such report. The amendment at such a juncture particularly when both the parties have exposed their stand by leading full fledged evidence at trial would not be in consonance with requirement of law of amendment.

12. Learned counsel also cited **Anant Ram vs. Hans Raj and others 2012 (5) RCR (Civil) 609** to contend that the error was a typographical mistake and the same was required to be corrected.

13. I fail to see any clerical error in the pleadings, rather it was a categoric foundation made in the pleadings of the plaintiffs, which was duly supplemented by plaintiffs' witnesses in their examination-in-chief. The defendants have already led their evidence and such an amendment cannot be termed to be bona fide by any stretch of imagination. Learned counsel also referred to the ratio applied in **Abdul Rehman and another vs. Mohd.Ruldu and others 2012 (4) RCR (Civil) 481.**

14. Having considered the import of precedents cited at the bar, the amendment in question would definitely change the basic structure of the suit itself as the subject matter of suit would be entirely changed and would result in *de novo* trial. There will be complete change in the prayer clause. The amendment in question is not proved to be bona fide as there will be a vertical change in the stand of the plaintiffs, instead of Northern and Eastern portion of the alleged encroachment, now the portion will be changed to Northern and Western. The total dimensions vis-a-vis site plan of the suit property would be changed. The defendants would have to take new stand. There would be fresh bout of pleadings and evidence based on such amendment and there would be a *de novo* trial once again. The law does not permit such a course under the garb of amendment on the alleged plea of typographical error. The trial has already commenced and the suit was at the fag end of

arguments. A new cause of action would be added, which would prejudice the case of the defendants.

15. In view of above, this Court is not inclined to accept the prayer of the petitioners for amendment of plaint at this stage. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

August 30, 2016

anita

Whether speaking/reasoned Yes / No

Whether reportable Yes / No