

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.5800 of 2016 (O&M)
Date of decision:07.10.2016

Gian Kaur

... Petitioner

Vs.

Balwant Singh and others

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Rekhi, Advocate
for the petitioner.

Ms. Gursharan K. Mann, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the impugned order dated 18.05.2016 (Annexure P-3), whereby, the application under Order 6 Rule 17 of Code of Civil Procedure (hereinafter referred to as “CPC”) for amendment of the plaint converting the suit for mandatory injunction, has been dismissed.

Mr.K.S.Rekhi, learned counsel appearing on behalf of the petitioner-plaintiff submits that the impugned order is not sustainable in the eyes of law as earlier on 01.07.2015, the suit for permanent injunction restraining the defendants from interfering into peaceful and lawful possession of the plaintiff or to dispossess her from the suit property was filed. During the pendency of the suit, the respondents had started raising

construction and changing the nature of the suit property. It is in this background of the matter, the application aforementioned, was filed and the Court below has erroneously dismissed the same on the premise that the construction had already been raised. He further submits that the alleged amendment sought would help the Court in deciding the controversy between the parties.

Per contra, Ms. Gursharan K. Mann, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in the order under challenge and the order is perfectly legal and justified. The report of Local Commissioner was that the construction on the suit land has already been raised by the defendants, i.e., also prior to the filing of the present suit. If that is so, nothing prevented the plaintiff to incorporate the relief of mandatory injunction and thus, urges this Court for affirming the findings under challenge.

I have heard learned counsel for the parties and appraised the paper book and of the view that if the suit is at the initial stage, the relief of mandatory injunction sought to be incorporated would help the Court in deciding the controversy as according to the plaintiff, the construction had been raised later on but the same has been disputed by the defendants which shall be seen by the Court below and if it is so, the plaintiff may not be confronted with the appropriate relief and thus, application for amendment was moved at an appropriate stage.

For the reasons aforementioned, the impugned order dated 18.05.2016 is set aside. Accordingly, the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

October 07, 2016
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No