

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

**CR No.6783 of 2016(O&M)**

**Date of decision:27.10.2016**

Hoshiar Sigh and another

....Petitioners

VERSUS

Dharam Pal and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Sunil Chadha, Senior Advocate with  
Mr. Chetan Bansal, Advocate for the petitioners.

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**REKHA MITTAL, J.**

The present petition lays challenge to order dated 17.09.2016 (Annexure P-6) passed by the Additional Civil Judge (Senior Division), Meham whereby the application filed by the respondents/plaintiffs (Annexure P-5) for amendment of the plaint has been allowed.

Counsel for the petitioners has submitted that the respondents/plaintiffs have filed a suit for permanent injunction claiming a right of passage for ingress and egress from their land mentioned in para 5 to 8 of the plaint on the premise that there is no other rasta/path except shown in red colour in the site plan and as such there is easement of necessity in favour of the plaintiffs.

The defendants/petitioners filed the written statement raising a specific plea that the suit is not maintainable in the present form. The plaintiffs filed replication controverting the preliminary objections including the suit being not maintainable by averring that suit can only be filed in the present form and is well maintainable. It is further argued that the parties have already adduced evidence in support of their respective

claims and at the fag end, application (Annexure P-4) for amendment was filed in order to add the relief of declaration qua right of easement of necessity and the same has been wrongly allowed by the trial Court without appreciating that suit of the plaintiff is liable to be dismissed for want of seeking relief of declaration, therefore, a serious prejudice shall be caused to the petitioners by allowing the proposed amendment for which they cannot be compensated with costs. It is further argued that amendment of a plaint cannot be allowed when amendment sought is belated one and is an afterthought for the obvious purpose to avoid the inevitable consequence. Another submission made by counsel is that the proposed amendment otherwise does not satisfy the twin requirements of proviso appended to Rule 17 of Order 6, therefore, is liable to be rejected. In support of his contention, he has relied upon judgments of Hon'ble the Supreme Court of India **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka and others**, 2013(2) Civil Court Cases 811 and **J. Samuel and others Vs. Gattu Mahesh and others**, 2012(1) RCR (Civil) 903.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned and the judgments cited at bar.

Before dealing with the submissions made by counsel for the petitioners, it is appropriate to recapitulate that Hon'ble the Supreme Court of India after taking into consideration the proviso appended to Rule 17 of Order 6 of the Code of Civil Procedure, 1908 (in short 'CPC') has laid down certain factors to be taken into consideration for deciding a plea for amendment of the pleadings. In **Revajeetu Builders and Developers Vs.**

**Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27**, in para 67

and 68 of the judgment, the Court has held, quoted thus:-

“67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
  - (2) Whether the application for amendment is *bona fide* or *mala fide*?
  - (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
  - (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
  - (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?
- And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

The judgment in **Revajeetu Builders and Developers’s case** (supra) was not considered in the later decision **J. Samuel and others’ case** (supra). Even otherwise, the facts and controversy involved in **J. Samuel and others’ case** (supra) was entirely different from the one cropped up in the present case. In **J. Samuel and others’ case** (supra), amendment of plaint was sought to incorporate specific pleadings in compliance of Section 16(c) of the Specific Relief Act, 1963 on the ground that same was due to typographical error and application for amendment was filed after arguments were concluded and matter was posted for

judgment. Hon'ble the Apex Court held that omission of mandatory requirement of Section 16(c) running into 3 to 4 sentences cannot held to be a typographical error and since situation is of lack of due diligence, such an amendment is impliedly barred under the Code of Civil Procedure.

Conversely, in the case at hand, the plaintiffs have filed a suit for permanent injunction with a specific plea that they have right of easement of necessity qua the property in question, therefore, defendants are not entitled to create any obstacle in their use of passage for ingress and egress to their land. By way of the proposed amendment, the plaintiffs have sought to add the relief of declaration claiming right of easement of necessity in order to do away technical objection that their suit may not eventually fail for seeking the relief of declaration. On a pointed query raised by the Court, counsel for the petitioners has fairly informed that in case suit of the plaintiffs seeking relief of injunction fails for want of claiming relief of declaration, the respondents/plaintiffs may file another suit claiming both the relief of declaration and injunction. In the given circumstances, dismissing application of the respondents to amend the plaint would be nothing but inviting another bout of litigation at the cost of wastage of precious time of the Court and all stakeholders besides unnecessary expense and inconvenience for the parties. In this view of the matter, it is difficult to accept that the proposed amendment would cause such a prejudice to the petitioners for which cost is not a remedy. That being so, the petitioners cannot derive any advantage to their contentions from the judgments relied upon. On the contrary, when the facts and circumstances of the present case are examined in the light of principles culled out by Hon'ble the Supreme Court of India in **Revajeetu Builders**

**and Developers case** (supra), I do not find any reason to interfere in the discretion exercised by the trial Court permitting amendment of the plaint.

For the reasons aforestated, the petition fails and is accordingly dismissed in *limine*.

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| <b>OCTOBER 27, 2016</b>   |   | <b>(REKHA MITTAL)</b> |
| ‘D. Gulati’               |   | <b>JUDGE</b>          |
| Whether speaking/reasoned | : | yes/no                |
| Whether reportable        | : | yes/no                |