

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

**CR No.8276 of 2015
Decided on: 20.05.2016**

Harnam Singh and others	Versus	Petitioners
Karam Singh		Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Prashant Bansal, Advocate
for the petitioners.

Mr. Lalit Garg, Advocate
for the respondent.

- 1. Whether Reporters of local papers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

REKHA MITTAL, J.

The present petition has been directed against order dated 29.05.2015 (Annexure P-5) passed by the Civil Judge (Sr. Division), Rajpura, dismissing application of the petitioners for amendment of the plaint.

Harnam Singh and others have filed a suit for permanent injunction restraining the respondent/defendant from raising any construction over land bearing Khasra No.49//1 (0-2) situated in village Jamitgarh, Tehsil Rajpura, District Patiala or changing nature thereof. The suit was instituted in January,2014. The respondent/defendant filed a written statement contesting claim of the petitioners/plaintiffs. The petitioners filed the application for amendment in order to add the relief of possession that has been dismissed by the learned trial Court.

Counsel for the petitioners would contend that earlier, the petitioners filed a suit for mandatory injunction *qua* the suit land that was decreed by the trial Court. The judgment and decree passed by the trial Court was affirmed in appeal by the Additional District Judge, Patiala. The regular second appeal preferred by Karam Singh against the judgment and decree dated 12.11.2011 has been dismissed by the High Court vide order dated 07.02.2014 (Annexure P-6). It is further argued that as the respondent is creating hurdle in execution of the decree passed in favour of the petitioners that has attained finality upto this Court, necessity has arisen to amend the plaint by seeking relief of possession. Another submission made by counsel is that as the petitioners can file an independent suit for possession, allowing the proposed amendment would avoid multiplicity of proceedings when otherwise no prejudice would be caused to the respondent.

Counsel for the respondent, on the contrary, has supported the impugned order with the submissions that the application for amendment has been filed with a view to wriggle out of the order passed by the trial Court allowing last opportunity to conclude evidence. It is further argued that the petitioners are hell bent to entangle the respondent in litigation one way or the other and the present application is another attempt to aggravate his misery and agony.

I have heard counsel for the parties, perused the paperbook particularly the order impugned.

Indisputably, the petitioners earlier filed a suit for mandatory injunction *qua* the suit property with the plea that the

respondent has raised unauthorized construction and the litigation has finalized upto this Court. The present suit for injunction was filed in January, 2014. On completion of pleadings of the parties, issues were framed and the petitioners were called upon to lead their evidence. The learned trial Court has noticed that after framing of issues on 05.04.2014, the petitioners failed to adduce any evidence despite availing numerous opportunities and when last opportunity was granted to conclude their evidence, the present application was filed. Keeping in view conduct of the petitioners who have been litigating against the respondent in respect of the suit property for quite sometime coupled with the fact that they preferred to file a simplicitor suit for injunction knowing fully well that their claim for mandatory injunction has been allowed in the earlier *lis* that has now been finalized upto this Court in view of dismissal of regular second appeal filed by respondent – Karam Singh, the present application filed by the petitioners does not appear to be *bona fide* and seems to have been filed with an intent to keep the respondent entangled in the litigation. In this view of the matter, I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated in this order shall prejudice right of the petitioners to take recourse to appropriate proceedings, in accordance with law for filing a suit for possession against the respondent, if so desired.

20.05.2016

yakub

(REKHA MITTAL)
JUDGE