

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 8499 of 2015 (O&M)

Date of Decision: 03.02.2016

Balwan

... Petitioner(s)

Versus

Zila

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Parminder Singh, Advocate
for the petitioner(s).

Shekher Dhawan, J.

Present petition is challenge to the order dated 19.11.2015, passed by learned Civil Judge (Junior Division), Assandh, whereby application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of plaint, filed by the plaintiff, was allowed.

Relevant facts of the case that main suit for permanent injunction, at the instance of plaintiff-Zila, was filed on the ground that plaintiff is owner in possession of *Bara* measuring three marlas comprised in khewat No. 194, khatoni No. 290, rectangle No. 94, killa No. 9/2/4(0-3) situated within the revenue estate of village Pucca Khera, Tehsil Assandh, District Karnal. Defendant contested the said

application, thereby taking a plea that suit property is in possession of the defendant. Plaintiff had filed application for amendment of plaint, thereby raising the plea that defendant encroached upon the portion of the suit land by way of constructing wall over 25 yards and by putting earth on over 21 yards of the suit land and this plea was negated by the defendant in the reply. The Court below, after considering the facts, passed detailed order that such an amendment is essential for the just decision of the case.

Learned counsel for the petitioner submitted that petitioner had taken the plea in the written statement from the beginning that the disputed property is in possession of the defendant and no construction was raised over the land in question during pendency of the suit and as such application for amendment having been filed by the plaintiff is not maintainable.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that law on the point is settled that at the time of deciding application for amendment of pleadings, the court must look at the real *lis* between the parties and always try to dispose of the litigation finally on the basis of material and evidence available with them. Any subsequent development having taken place during pendency of the suit, with regard to suit property or rights of the parties, should also be determined and decided in the same litigation. Even such an amendment in the pleadings is permissible at the evidence stage.

In the case in hand, plaintiff had come with the prayer that

defendant encroached upon the portion of the suit land by way of constructing wall over 25 yards and by putting earth on over 21 yards of the suit land and the alleged act of raising of construction is made basis of subsequent development, which certainly makes out a case for amendment of the pleadings. There is no dispute that possession of the property being claimed by both the parties and that shall be the matter of controversy to be decided by the Court below on the basis of evidence available on the file. By that way, there is no illegality in the order dated 19.11.2015, passed by the Court below, thereby allowing amendment of the plaint so as to incorporate subsequent development having taken place during pendency of the litigation. Hence, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

February 3, 2016

"DK"