

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

CR No. 8702 of 2014 (O&M)

Date of decision: 26.04.2016

Zail Singh through his LR Balwinder Singh and another
... Petitioners

versus

Harnek Singh
.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Abhinav Jain, Advocate for the petitioner.

Mr. B.S. Bhalla, Advocate for the respondent.

K.Kannan, J. (ORAL)

The revision petition is against the dismissal of an application for amendment of the plaint to include a prayer for mandatory injunction for removal of a doorway opened by the defendant in the suit property. According to the plaintiff it was a subsequent event and, therefore, he should be permitted to bring an amendment. The defendant contention was that he had made reference to the fact that the plaintiff's plan was wrong and he had himself given a plan where the doorway had been shown. This according to him would constitute a pleading and when the statement was filed, the plaintiff was taking steps for amendment only at the stage of rebuttal of evidence on 01.05.2014 belatedly. The trial Court accepted the contention made by the defendant and denied amendment.

Counsel for the petitioner states that there was no express statement that the doorway had already been opened and to the defendant, the statement must be inferred by the fact that there was a reference to the plan and since the plan was attached to the statement,

the existence of doorway in the plan must have been taken notice of by the plaintiff to seek for necessary relief at that time. There was admittedly no specific statement making reference to the existence of doorway but the defendant would as make an inference only possible by reference to the plan. I will take it that it is not sufficient for the plaintiff to take notice of the same. The plaintiff will stand or fall by his own pleadings that the doorway was opened subsequent to the suit. In any event, I find no prejudice is possible for, if the defendant is entitled to keep the doorway then he must establish his own right or if the plaintiff cannot object to the existence of doorway, the plaintiff's action will fail. In either event so long as there is no bar of limitation, I will allow the amendment to come in the interest of justice.

The order already passed is set aside and the amendment is permitted to be brought in the manner sought for. The defendant is at liberty to join issues on the basis of amended pleadings by amendment to the written statement or by additional pleadings in the manner contemplated in Order 8 Rule 9 CPC. The impugned order is set aside and the revision petition is allowed.

(K.KANNAN)
JUDGE

26.04.2016

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