

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

**CR No.92 of 2014
Date of decision:05.04.2016**

M/s Sunrays Rolling Mills ... Petitioner

Vs.

Chander and another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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. Gopal Sharma, Advocate
for the petitioner.

Mr. Ankur Lal, Advocate, for
Mr. Mukesh Verma, Advocate
for the respondents.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the dismissal of the application filed under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in the plaint by mentioning the word “defendants” instead of “defendant” and as well as, application under Order 1 Rule 10 of the Code of Civil Procedure seeking impleadment of Smt. Chanderkanta wife of Chander, who, is the original owner.

Mr. Gopal Sharma, learned counsel appearing on behalf of the petitioner-plaintiff submits that suit for mandatory injunction and permanent injunction was filed against the defendants on the premise that he was owner of the property with regard to certain

alleged violations. It is only in cross examination of the defendants, it has surfaced that wife of defendant No.1 is also a co-owner. It is in these circumstances, applications under Order 6 and Rule 17 of the Code of Civil Procedure and under Order 1 Rule 10 of the Code of Civil Procedure were moved, therefore, the provisions of Section 21 of the Limitation Act would not come in the way in a suit for mandatory injunction. Moreover, on instructions from his client, he submits that he does not want to lead any fresh evidence.

Mr. Ankur Lal, learned counsel appearing on behalf of the respondents submits that there is no illegality and perversity in the orders declining the applications as the same are wanting plausible explanation, particularly expression “despite exercise of due diligence”. Suit is reached at the stage of defendants' evidence. In case, the amendment is allowed, it tantamount to de novo of the trial, which is not permissible in law.

I have heard learned counsel for the parties and appraised the paper book and of the view that amendment sought is most innocuous and does not amount to change or alter the nature of the suit, much less, rigors of Section 21 of the Limitation Act would not come in adjudication of the suit. The apprehension of the petitioner-plaintiff was that in case he succeeds in the suit, the objection of non-joinder of necessary party would be taken. In my view, the amendment sought by incorporating the word “defendants” instead of “defendant” and as well as, impleadment of defendant

No.2 Smt. Chanderkanta wife of Chander, being co-owner of the property is essential and would help the Court in deciding the lis. Accordingly, the impugned orders are set aside and revision petition is allowed subject to payment of costs of Rs.5,000/-.

(AMIT RAWAL)
JUDGE

April 05 2016
savita