

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.1837 of 2016
DATE OF DECISION: July 3,2017

Balbir Singh and others

...Petitioners

versus

Hakam Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.L.S.Bhangu, Advocate for the petitioners.
Mr.S.S.Sarwara, Advocate for the respondent.

RAMESHWAR SINGH MALIK, J.(ORAL)

The present revision petition filed under Article 227 of the Constitution, at the hands of the plaintiffs, is directed against the order dated 26.2.2016 passed by the learned trial Court whereby their application for amendment of the plaint was dismissed.

Notice of motion was issued and pronouncement of the final order by the learned trial Court was stayed.

Heard learned counsel for the parties.

The relationship between the parties is not in dispute. It is also a matter of record that initially the plaintiffs filed a suit for permanent injunction restraining the defendant from

interfering into their use of water and also from shifting the electric connection from one khasra number to other khasra number. The land was also joint between the parties. It is also not in dispute that the defendant shifted the tube-well connection from khasra No.118 to khasra No.150 during the pendency of suit, thereby compelling the plaintiffs to move an application under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in their plaint. The plaintiffs sought the amendment with a view to convert their suit for permanent injunction into a suit for mandatory injunction which was declined by the learned trial Court.

Having heard the learned counsel for the parties and after going through the record of the case, particularly, the impugned order, this Court is of the considered view that the learned trial Court mis-directed itself while passing the impugned order denying the amendment in the plaint. It is so said because it had become compulsive necessity of the plaintiffs-petitioners to move the application for amendment of their plaint because of shifting of the tube-well connection from khasra No.118 to khasra No.150 at the hands of the defendant and that too during the pendency of the suit. Thus, it has become crystal clear that unwarranted action on the part of the defendant has caused a serious prejudice to the plaintiffs forcing them to seek amendment in their plaint which ought to have

been allowed by the learned trial Court. However, since learned trial Court failed to appreciate the above said crucial aspect of the matter, i.e. shifting of tube-well connection, impugned order cannot be sustained.

The only argument raised by learned counsel for the respondent-defendant that the application for amendment was moved after quite some time would not be a material fact in the present case because of its peculiar facts and circumstances of the case, noticed hereinabove. Defendant-respondent cannot be permitted to draw any benefit in this regard from his own wrong. As on date, the defendant has got two tube-well connections in his land, whereas, the land of the plaintiffs-petitioners has been left without any facility of irrigation, therefore, equity is also in favour of the plaintiffs-petitioners and against the defendant-respondent.

Further, allowing the amendment in the plaint would also avoid multiplicity of the litigations between the parties. Again, amendment in the plaint will not cause any kind of prejudice to the defendant-respondent who is well aware about the changed circumstances as well. Under these peculiar facts and circumstances of the case, it is in the interest of justice that the application for amendment of the plaintiffs-petitioners deserves to be allowed.

No other argument was raised.

Considering the peculiar facts and circumstances of the present case, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 26.2.2016, Annexure P.1, passed by the learned trial Court is set aside. Consequently, the application moved by the plaintiffs-petitioners under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in their plaint would stand allowed.

Resultantly, with the aforesaid observations made, the present revision petition stands allowed, however, with no order as to costs.

July 3, 2017
KD

(Rameshwar Singh Malik)
Judge

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No