

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.579 of 2017(O&M)
Date of decision : 30.5.2017

M/s Kirbco Infra Structure Limited

...Petitioner

Vs.

Satyanarain Sharma and others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Mr.Gulshan Nandwani, Advocate for respondent No.1.

MrNipun Vashisth, Advocate for respondent No.2.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 6.12.2016 (Annexure P-4) whereby application under Order 6 Rule 17 CPC moved by the plaintiffs was allowed permitting them to amend their plaint, defendants have approached this Court by way of present civil revision petition under Article 227 of the Constitution of India for setting aside the impugned order (Annexure P-4).

Notice of motion was issued. In the meantime, operation of the impugned order was stayed.

Heard learned counsel for the parties.

Bare perusal of the impugned order passed by the trial Court

would show that very nature of the suit was being sought to be changed by the plaintiffs which could not have been permitted by the trial Court by passing the impugned order. It is a matter of record and not in dispute that in the originally filed suit, the land in question was 107 kanals 11 marlas and the plaintiffs were claiming 1/6th share each in the suit land. During the pendency of the suit the release deed came to be executed by defendant No.1 in favour of the plaintiffs and as a result thereof, application under Order 6 Rule 17 CPC was moved on behalf of the plaintiffs for relinquishment of their right qua land measuring 74 kanals 3 marlas out of total land measuring 107 kanals 11 marlas.

Having heard learned counsel for the parties, this Court feels no hesitation to conclude that learned trial Court misdirected itself while permitting the plaintiffs to amend their plaint with such basic change in their originally filed suit which was not at all permissible in law. It is so said because the plaintiff would be changing their nature of suit in its entirety thereby causing serious prejudice to the defendant including the present petitioner. It goes without saying that none of the parties can be permitted to take a complete somersault altogether changing its stand already taken in its pleadings. It is so said because if such an amendment is permitted, not only other side would be taken by surprise but would also suffer irreparable loss and injury. This can never be the object and scope of Order 6 Rule 17 CPC. Since the learned trial Court failed to appreciate the abovesaid settled proposition of law before passing the impugned order, it has resulted in miscarriage of justice and the same cannot be sustained for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons afore-mentioned, this Court is of the considered view that since the impugned order dated 6.12.2016 (Annexure P-4) has been found suffering from patent illegality and perversity, the same cannot be sustained. Accordingly, impugned order dated 6.12.2016 (Annexure P-4) is hereby set aside.

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

(Rameshwar Singh Malik)
Judge

30.5.2017
Meenu

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No