

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

-.-

Civil Revision No. 5924 of 2017
Date of decision: 04.09.2017

Smt. Bala

..... Petitioner

Versus

Vijay Naresh Bahadur Singh alias Sachin Yadav & others.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Chanderhas Yadav, Advocate
for the petitioner

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Rekha Mittal, J.

The present petition directs challenge against order dated 03.08.2017 passed by the Civil Judge (Junior Division), Jhajjar whereby application filed by respondent No. 1/plaintiff for amendment of the plaint has been allowed.

Counsel for the petitioner/defendant No. 5 has assailed the impugned order primarily on two counts. The first submission made by counsel is that in the original suit, the respondent/plaintiff has claimed himself to be owner in possession of the suit property and has assailed sale deeds dated 15.09.2006, 02.03.2007 and 25.04.2007 and mutations sanctioned thereon with relief of permanent injunction restraining the defendants from interfering in his peaceful possession of the suit property, raising any construction thereon or alienating the property in question. By way of proposed amendment, respondent No. 1 has sought to add relief of

mandatory injunction directing the petitioner/defendant No. 5 to remove construction raised on a part of the suit property. It is argued that allowing the proposed amendment would change nature of the suit and introduce a fresh cause of action, therefore, the proposed amendment cannot be allowed. It is further submitted that as per the application filed by the respondent/plaintiff, the petitioner has raised some temporary construction on a small portion of the suit property and said plea gets falsified and belied from photographs (Annexure P9) showing pucca construction with lintel on roof, therefore, the respondent/plaintiff has not filed the application for amendment with clean hands. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court ***Revajeetu Builders and Developers v. Narayanaswamy and Sons and others 2010 (1) R.C.R. (Civil) 27*** and ***Raj Kumar Gurwara (Dead) through L.Rs v. M/s S K Sarwagi and Company Pvt. Limited and another, 2008(4) R.C.R. (Civil) 824.***

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

The respondent/plaintiff has filed a suit for declaration and permanent injunction in respect of residential property comprising in khasra No. 885 (6-10), 886 (1-10) measuring 8 K 0 M earlier owned by Ishwardass son of Makhan Dass and others to the extent of 1/6th share. In paras 2 to 5, there is reference to certain sales of the said property through different sale deeds. The plaintiff has staked his claim to the suit property on the plea that Amar Singh son of Chet Ram, grand father of the plaintiff remained owner in possession of the property, detailed in para 7 of the plaint and after his

death, the plaintiff has become owner in possession of the same as per registered Will dated 22.09.1994. He has further pleaded that on the basis of illegal sale deed executed by defendant No. 1, the defendants in collusion with each other want to dispossess the plaintiff from the land mentioned in para 7 of the plaint.

The plaintiff filed the instant application for amendment with the plea that after evidence of the plaintiff, defendant No. 5 has raised some temporary construction over a small portion of property in dispute due to which amendment of the plaint is necessary to add relief of mandatory injunction directing defendant No. 5 to remove unauthorized construction raised by her during pendency of the case and deliver vacant possession of the same to the plaintiff. As the respondent/plaintiff has sought the relief as a consequence of some subsequent events which allegedly took place during pendency of the suit, it is difficult to accept contention of the petitioner that allowing the proposed amendment would constitutionally and fundamentally change nature of the suit and as such amendment cannot be allowed in view of one of the principles culled out by Hon'ble the Supreme Court in *Revajeetu Builders's* case (supra), reads as follows:

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?

As per plea of the respondent/plaintiff, necessity to add relief of mandatory injunction by way of amendment has arisen due to the alleged acts of the petitioner in raising construction over a part of the suit property during pendency of the suit. So far as the plea of the petitioner that plea of the respondent/plaintiff with regard to raising temporary structure gets

falsified from photographs (Annexure P9), the said plea would be subject matter of adjudication by trial Court on the basis of evidence to be adduced by the parties. The petitioner, at this stage, cannot derive any strength to her contention from the photographs (Annexure P9) which may be proved during trial, in accordance with law. This apart, at the stage of deciding an application for amendment of the pleadings, the Court cannot examine merits of the plea sought to be raised by way of amendment. In the given facts and circumstances, the petitioner cannot derive any advantage to her contentions from the referred authorities.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

04.09.2017
mohan bimbira

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