

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

258

CR-6737-2016

Date of Decision:10.05.2017

Om Parkash and another

.....Petitioners

Versus

Ram Dutt and others

.....Respondents

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

Present: Mr.P.K.Bajaj, Advocate,
for Mr.Anil Malik, Advocate,
for the petitioners.

Mr.Manoj Sharma, Advocate,
for respondent Nos.1 to 3.

Mr.Vikas Dhull, Advocate,
for Mr.Amit Khatkar, Advocate,
for respondent No.6.

RAMESHWAR SINGH MALIK, J.(Oral)

Feeling aggrieved against the impugned order dated 08.08.2016 (Annexure P-3), whereby application for amendment in the plaint was dismissed, plaintiffs have approached this Court by way of instant revision petition, filed under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that petitioners, being the plaintiffs, moved the application for amendment of the plaint at the initial stage of the suit. Issues had not been framed before filing the

application for amendment of the plaint. Even the application filed by the petitioners-plaintiffs for interim injunction under Order 39 Rules 1 and 2 of the Code of Civil Procedure (for short “the CPC”) was also pending. The dispute between the parties was regarding alleged encroachment on a public street. However, Gram Panchayat never initiated any kind of ejectment proceedings against the plaintiffs.

It were the plaintiffs who approached the Court by filing the suit for permanent injunction. During the pendency of the suit, respondents-defendants caused some demolition and then raised some construction, which became compulsive necessity for the plaintiffs to move the application under Order 6 Rule 17 CPC seeking amendment in their plaint, with a view to incorporate the prayer for mandatory injunction as well. However, since the learned trial Court failed to appreciate this factual as well as legal aspect of the matter, while passing the impugned order, it cannot be sustained.

As noticed here-in-above, the suit was at the initial stage. Issues were yet to be framed. Application under Order 39 Rules 1 and 2 CPC was yet to be decided. No prejudice of any kind, whatsoever, was going to be caused to the defendants-respondents by permitting the plaintiffs to amend their plaint. Had the learned trial Court allowed the application for amendment of the plaint, it would have certainly avoided multiplicity of litigation between the parties. Further, amended pleadings of the parties would have also facilitated the learned trial Court to arrive at a judicious conclusion, with a view to do substantial justice between the parties. However, since the learned trial Court failed to exercise its jurisdiction judiciously before passing the impugned order, it cannot be

sustained, for this reason also.

It is the settled proposition of law that rules of procedure are meant for advancing the cause of justice. Courts of law must make an endeavour to grant sufficient opportunity to both the parties to the litigation to put-up their best case before the Court. Nobody should be forced to go home with the grievance that reasonable opportunity was not granted. While following the abovesaid principle of law, the learned Court shall achieve twin objects; namely, (i) it would avoid multiplicity of litigation between the parties and (ii) the learned Court will be in a much better position to do complete and substantial justice between the parties. However, in the present case, the learned trial Court failed to follow the abovesaid principle of law, while passing the impugned order and the same cannot be sustained, for this reason as well.

During the course of hearing, learned counsel for the respondents could not address any meaningful arguments in support of the impugned order and rightly so, it being a matter of record. In fact, no argument was available to them. Since the impugned order has been found suffering from patent illegality, the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that the impugned order has been found suffering from patent illegality. Accordingly, impugned order dated 08.08.2016 (Annexure P-3) passed by the learned trial Court is hereby set aside. Application moved by the plaintiffs for amendment of their plaint would stand allowed and they shall be permitted to file their amended plaint. The learned trial

Court shall amend or frame additional issues, if so required, so that the parties to the litigation may lead their evidence accordingly. Thereafter, the suit shall be decided expeditiously, in accordance with law.

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

May 10, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No