

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

**CR No.8722 of 2017 (O&M)
Date of Decision: 13.12.2017**

Sham Nath

...Petitioner(s)

Versus

Gourav Goyal and others

...Respondent(s)

CORAM:-HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Lokesh Vohra, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The petitioner has challenged the order dated 27.10.2017 passed by Civil Judge (Sr. Division), Fatehgarh Sahib. The application filed under Order 6 Rule 17 CPC seeking amendment of the plaint had been dismissed.

A copy of the plaint has been placed on record.

I have heard counsel for the petitioner at great length.

Sham Nath had filed a suit against defendant No.1 who was his lawyer. He was engaged for filing an anticipatory bail application. The plaintiff had pleaded that defendant No.1 obtained his signatures on blank papers to file bail application but later a compromise was effected with the complainant and the need for filing the anticipatory bail application did not arise. The plaintiff approached defendant No.1 and asked him to return the blank papers which he promised to

return but later on failed to do so. The plaintiff gave some details which are not relevant to the issue for examination here. In Para 7 of the plaint, it was pleaded that defendants No.2 to 6 had an eye over his property and were his neighbours and wanted him to leave the house. He approached the Deputy Commissioner, Fatehgarh Sahib and the SSP of the District with a complaint. The matter was inquired and a compromise was effected.

The plaintiff claimed that defendant No.1 had come closer to defendants No.2 to 6 and defendants No.2 to 6 started harassing him. The plaintiff sought a decree for injunction restraining defendant No.1 from misusing the blank papers or from handing over the blank papers to defendants No.2 to 6 and for mandatory injunction directing defendant No.1 to return the papers.

The counsel for the petitioner submits that defendant No.1 filed the written statement but issues had not been framed and the plaintiff moved an application seeking permission to amend the plaint and insert few facts and was seeking directions to defendants No.2 to 6 to remove the illegal constructed wall constructed over the wall shown in the site plan at point 'X'. The counsel submits that the amendment was being made at the initial stage but the trial Court had wrongly dismissed his application.

The lower Court had made the following observation in Para 6 & 7 and they read as under:-

“6. By way of the present application, the plaintiff seeks to amend certain paragraphs in the plaint. Careful

perusal of the plaint shows that the plaintiff has filed the present suit of permanent injunction to restrain the defendant No.1 from misusing the blank papers bearing signatures of the plaintiff and restraining him further from handing over the blank papers bearing signatures of the plaintiff to defendants No.2 to 6. However, by way of the present amendment, the plaintiff seeks a direction to the effect that the defendants No.2 to 6 be directed to remove the illegal constructed wall constructed over the wall of the plaintiff as shown in the site plan at letter 'X'. Allowing such an amendment would altogether introduce a new matter at hand. The plaintiff in his original plaint has nowhere mentioned about any construction on any property nor has given any details regarding the same. No such property has been described at all in the original plaint.

*7. If the plaintiff wants to add certain facts, which the plaintiff had not chosen to mention in the original plaint and the same has been in his knowledge when the plaint was instituted, the plaintiff cannot be allowed to make fresh allegations of facts by way of an amendment. Reliance can be placed on '**Gopal Krishnamurthi Vs. Shreedhararao, AIR 1950 (Madras)**'. The amendment sought is also not imperative for the proper and effective adjudication of the case at hand. Instead allowing of such an amendment would constitutionally and fundamentally change the nature and character of the case. Even otherwise if the amendment is allowed, it would only result into futile exercise as the amendment is not coherent with the main suit. Moreover, the plaintiff has failed to show as to what is his intention to get such an amendment. Therefore, the plaintiff cannot be allowed to amend his plaint in such a manner as to import a new case totally".*

A reading of the plaint shows that there are no averments regarding any dispute regarding the wall. The plaintiff did not even refer to the fact as to when the wall was constructed when the water

tank was placed and by way of amendment he intends to introduce a totally new cause of action and claim a relief which has no connection whatsoever with the prayer made in the suit. The suit had been filed for return of the blank papers and injunction. The plaintiff completely wants to change the facts and introduced a new cause which could not be permitted. The application was rightly dismissed.

There is no merit. The petition is dismissed in *limine*.

December 13, 2017
ps-l

(ANITA CHAUDHRY)
JUDGE

Whether Reasoned/Speaking
Whether Reportable

Yes/No
Yes/No