

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

C.R. No.1090 of 2016

Date of Decision.22.02.2018

Prem Pal Singh

.....Petitioner

Vs

Pawan Bajaj and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Handa, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No.1 to 3.

Mr. Balwinder Singh, Advocate
for respondent No.4.

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AMIT RAWAL J.(ORAL)

The revision petition is directed against the order dated 08.10.2015 (Annexure P-4) whereby the application moved on behalf of the petitioner-plaintiff for amendment under Order 6 Rule 17 CPC in civil suit titled as “Prem Pal Singh Vs. Pawan Bajaj and others” has been dismissed.

The petitioner-plaintiff instituted the suit for permanent injunction restraining the respondents-defendants No.1 to 3 from making any colony in the land measuring 4B-18B-5B comprising of Khewat No.214/205, Khatauni No.250, Khasra No.6080, situated at village Mansuran, Hadbast No.290, Tehsil and District Ludhiana along with ad interim application for seeking restraint against illegal and forcible eviction on the premise that both the petitioner-plaintiff and the respondents-defendants were joint owners/co-owners in the aforementioned land which was earlier owned by Hari Singh, Pal Singh and Gurdayal Singh in equal shares whereas the Pal Singh and Hari Singh had entered into an agreement

to sell dated 07.01.1978 for the sale of their 1/3rd share each in favour of Prem Pal Singh. As per the agreement, it was agreed that there was a common rasta/path measuring 1¼ Gatha in width which connected the main path to the other land of the petitioner as well as the seller Pal Singh and Hari Singh for common use. A registered sale deed dated 07.06.1978 in pursuance of the agreement to sell was entered into giving the same particulars of the property. The necessity of the path arose because the adjacent land i.e. remaining 1/3rd share of land in khasra No.6080 was not sold as it was in the possession of Gurdial Singh.

Gurdial Singh sold his 1/3rd share in the suit land to Gurbax Singh son of Bishan Singh vide sale deed dated 05.06.1978 in pursuance of the aforementioned agreement to sell dated 07.01.1978. On 21.04.2006, Surjit Kaur, Nirmal Singh, Jora Singh and Santoksh Singh had sold 1/3rd share each in khasra No.6080 along with other land comprising in Khasra No.6097 and 6098 vide a single registered deed in faour of Pawan Bajaj, Surinder Singh and Amarjit Singh to the extent of 1/3rd share each. It was averred in the plaint that the petitioner-plaintiff had been using the aforementioned path till the filing of the suit.

Upon notice, the defendants filed their written statement contested the suit on merits. The trial Court had appointed local commissioner to make inspection of the land, who submitted the report dated 01.09.2012, which has been extracted in the grounds of revision petition. As a result thereof, an application dated 11.07.2013 (Annexure P-2) was submitted for causing amendment in the plaint i.e. to add certain facts in 5th line of the plaint, para 1 and in para 2 by incorporating sub-paras 2A to 2G.

The aforementioned application was contested by respondents-defendants on the premise that the same was misconceived and was moved with ulterior motive. The proposed amendment would change the entire nature of the suit and therefore, should not be permitted. It was stated that the plaintiff did not succeed in maintaining the interim injunction, which was dismissed by the trial Court and the appeal preferred before the lower Appellate Court also met with the same fate. In order to cover the lacunas as well as to make out a new case of injunction, the application had intentionally been moved as the issue in the aforementioned were struck on 14.09.2012. Even the plaint did not disclose all the facts, which were well within the knowledge of the plaintiff. The aforementioned facts were not clarificatory enabling the plaintiff to seek amendment. The trial Court vide impugned order dismissed the aforementioned application.

Mr. R.K. Handa, learned counsel appearing on behalf of the petitioner-plaintiff submitted that while passing the impugned order, the trial Court again framed the issue on 08.10.2015 and listed the matter for plaintiff's evidence. The impugned order is not sustainable in the eyes of law as the amendment sought is most innocuous and clarifiactory nature which is permissible as the trial in the aforementioned suit has not yet commenced. The cause of action to seek amendment had accrued only on account of report of the local commissioner dated 01.09.2012. Since the application for amendment was pending adjudication, necessity arose to the petitioner for seeking appropriate direction by filing revision petition bearing No.3660 of 2013 which was disposed of vide order dated 10.07.2015 wherein it was mentioned that in case application for amendment is allowed, the petitioner shall be at liberty to move fresh

application seeking interim injunction. This fact has totally been ignored by the trial Court. The proposed amendment was warranted owing to the events occurred during the pendency of the suit, which does not tantamount to changing the nature of the suit. The finding of the trial Court in holding that the petitioner-plaintiff attempted to make out a new case is neither here nor there but conjectural, thus, urges this Court for setting the impugned order under challenge.

Per contra, Mr. Amit Jain, learned counsel appearing on behalf of respondent No.1 to 3 submitted that the aforementioned application was only a counter-blast to get the injunction. The matter cannot be revived in view of the observations recorded in the order dated 10.07.2015 whereby the revision petition aforementioned was disposed of purportedly on the premise that in case the application for amendment is allowed only then the plaintiff shall be at liberty to move application seeking interim injunction. The plaintiff can seek interim injunction by way of separate suit as cause of action accrued is independent of the one in pending suit. The findings of the Courts below are perfectly legal and justified and does not call for interference.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Handa, for, the amendment sought to be incorporated is not clarificatory in nature but the paragraphs sought to be incorporated as pleaded in the revision petition, in my view, gave a separate independent cause of action to the petitioner-plaintiff to claim injunction. Therefore, the remedy was to file separate suit instead of seeking multifarious relief of injunction. At the best, the plaintiff could have sought the decision of the

suit along with the pending suit but not in the manner and mode as indicated above. No doubt, the parties have not controverted the factum of dismissal of the interim application, it is yet to be proved whether there was any blockage of rasta/path.

In view of the aforementioned, the reasons assigned by the Courts below in dismissing the application for amendment are perfectly legal and justified and do not call for interference as the same cannot be said to be passed without jurisdiction. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 22, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No