

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

232

CR No.3451 of 2016

Date of Decision:28.02.2018

Dharambir and others

...Petitioners

Versus

Vinod and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Praveen Hans, Advocate
for the petitioners.

ANIL KSHETARPAL, J.(Oral)

Plaintiffs-petitioners are in the revision petition against the orders passed by the learned trial Court partly allowing the application under Order 6 Rule 17 of the Code of Civil Procedure and partly dismissing. Plaintiff is aggrieved of the order by which part of the application for amendment, has been declined.

It is not in dispute that when the application was filed, even the issues were not framed. Plaintiff wanted to add by making addition in Para 3-A, which is extracted as under:-

“3 (a) That after the inspection made by Local Commissioner Shri Ashok Kumar Bidlan Advocate, defendants illegally and unauthorizedly constructed kotha, new room shown in red colour ear marked by letters R S T U and latrine and bathroom shown in red colour ear marked by letters V W X Y and also fixed iron fence shown in red colour by installing nine R.C.C. pillars and also raised temporary wall 2 1/2 feet in height and 9 feet in width by putting by bricks without mud mortar and obstructed the street i.e. common

passage 22 feet wide shown by letters P Q in red colour in the site plan dated 03.03.2014 attached with the amendment application and caused obstruction in the above said common street shown in yellow colour and also closed the ingress and outgress of the houses of the plaintiffs as stated above to harass the plaintiffs and others, which may please be ordered to be demolished and removed immediately, otherwise plaintiffs would suffer irreparable loss, therefore prohibitory as well as mandatory injunction order against the defendants may please be passed.”

A careful reading of the assertions made would show that the plaintiffs were trying to incorporate subsequent events, which had taken place after the institution of the suit, based on the report of the Local Commissioner appointed by the Court. Such amendment, in the considered opinion of this Court, would help the Court in properly adjudicating upon the dispute. Originally, the plaintiff had filed a suit for permanent injunction restraining the defendants from raising any construction or creating any obstruction in the passage/open space. Further prayer was made in the original suit for passing a decree of mandatory injunction seeking direction to the defendants to remove/demolish the obstruction/construction already raised in the aforesaid passage/open land. During the pendency of the suit, a Local Commissioner was appointed by the Court to carry out local investigation and a report was submitted. On the basis of the aforesaid report, the plaintiff moved an application for amendment. Learned trial Court while declining the prayer, has observed that the facts sought to be added are subsequent

the plaintiffs have already filed an application under Order 39, Rule 2-A of the Code of Civil Procedure.

The Courts are required to take notice of the subsequent events and mould reliefs accordingly. In the present case, the plaintiff with a view to avoid of any technical objection, moved an application for amendment. The basic nature of the suit is not being changed. Only certain alleged construction can be carried out by the defendants during the pendency of the suit is being pointed out in the pleadings.

Order 39 Rule 2-A of the Code of Civil Procedure is entirely for different purpose. Order 39 Rule 2-A of the Code of Civil Procedure deals with the consequence of disobedience or breach of injunction. Proceedings under Order 39 Rule 2-A of the Code of Civil Procedure have to be dealt with by the Court independently.

In view of the aforesaid discussion, this Court is of the considered opinion that the order passed by the learned trial Court partly dismissing the application under Order 6 Rule 17 of the Code of Civil Procedure is erroneous. Hence, the order is set aside.

The application for amendment of the plaint filed by the plaintiff is allowed. Plaintiffs have already filed amended plaint along with the application, which would be taken on record. Defendants shall be entitled to file their written statement to the amended plaint.

Revision petition is allowed.

28.02.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No