

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR 3575-2012 (O&M)

Date of decision: 09.02.2018

Municipal Corporation Ludhiana and another

.....Petitioners

versus

Kanwaljit Singh (since deceased through LRs)

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.H.P.S.Ghumman, Advocate for the petitioners
Mr.Namit Gautam, Advocate for the respondent

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J. (Oral)

Impugned in the present revision is the order dated 6.2.2012, passed by learned Additional District Judge, Ludhiana, vide which, application filed by the petitioner-defendant under Order VI Rule 17 read with Section 151 CPC 1908 at the appellate stage to amend the written statement was declined.

It comes out that Plaintiff-respondent filed a suit in the year 1996 for permanent and mandatory injunction directing the defendants to remove the tube well from the disputed property. The suit was decided by learned Civil Judge (Senior Division), Ludhiana on 24.3.2006 i.e. after ten years and the same was dismissed. Aggrieved of the said judgment, the plaintiff-respondent preferred an appeal in the year 2006. It was during the pendency of that appeal that an application under Order VI Rule 17 read with Section 151 CPC 1908 was filed on 11.1.2011 i.e. after 5 ½ years of the filing of appeal for amendment of the written statement. By way of an amendment, the defendants want to raise a preliminary objection that the

site plan attached with the plaint is not correct and is not as per existing condition at the site. Certain additional facts were sought to be pleaded that Gurbachan Singh Grewal has executed GPA in favour of his son Rattan Singh Grewal. Paragraph no.7 in that regard reads as under:-

7. *That the plaintiffs are estopped by their act, conduct and acquiescence to file the present suit. Sh.Gurbachan Singh Grewal has executed a GPA in favour of his son Sh.Rattan Singh Grewal and Sh.Rattan Singh Grewal has moved an application dated 20.12.1971 with the defendants in which he has admitted that the defendants have kept the site in dispute as an open space in the scheme which was recently approved by the Punjab Government and that at the time of issuance of the notification of the scheme his father was not present at Ludhiana other wise they could have requested the defendants to leave the space for the construction of the house. He also got a legal notice dated 27.10.1972 issued to the defendants through his advocate Sh.Madan Lal Sharma and an another application dated 27.12.1971 was also submtited by him to the defendants. Sh.Gurbachan Singh ha salso filed a civil suit titled as Gurbachan Singh Vs. M.C.Ludhiana which was withdrawn by him on 03.03.1975 as mentioned by him in para no.5 of his another representation dated 20.09.1977. This representation was signed by Sh.Gurbachan Singh as well as his GPA Sh.Rattan Singh Grewal. The representation of Sh.Gurbachan Singh was declined by the defendants vide letter memo no.5697 dated 04.11.1977. The plaintiff has moved an*

representation as GPA of Gurbachan Singh Grewal in the year 1994 in which he has admitted that the corporation has developed a park in the land and have also installed a tubewell. The said representation was also declined by the defendants on the report submitted by the Corporation Town Planner M.C. Ludhiana who reported that the M.C. Ludhiana vide resolution no.1201 dated 24.07.1995 has directed the Commissioner M.C.Ludhiana that he should visit the site and then to submit the report. The Commissioner M.C. Ludhiana has visited the site on 06.10.1995 at 4 PM. He further reported that “the site area no.2 falls under the TP Scheme part 2 and the Government vide orders dated 11.4.1960 has declared the area as unbuilt. The applicant Kanwaljit Singh R/o Village and Post Office Khanjarwal Tehsil Jagraon District, Ludhiana has attached the sale deeds vide which they have purchased the land on 16.10.1962 and 16.04.1968, as per sale deeds, the applicant is the owner of land measuring 972 sq yards. As per record of ownership of the scheme, the Khasra numbers of the land of the applicant falls at serial no.65 of the record of ownership and in the record of ownership, the ownership has been shown as evacuee property and out of it area of 23.3% has been taken for parks and roads. The Municipal Corporation has started the scheme in the year 1960. The Municipal Corporation has initiated the move to frame the scheme in the year 1960, whereas the applicant has purchased the land from 1962 to 1968 and now the scheme has been

approved by the Government”. The report was accepted by the house of the M.C.Ludhiana vide resolution No.12 dated 07.06.1996 and the resolution no.1287/12 was rejected. The plaintiff was informed regarding the passing of the resolution no.12 dated 07.06.1996 vide letter memo no.2812 dated 17.06.1996. The plaintiff has failed to disclose all these facts although it was in the knowledge of the plaintiff. In the sale deeds the correct Khasra numbers were not mentioned intentionally, knowing well that these Khasra number have been changed. The correct Khasra numbers were not mentioned in the sale deeds as well as in the suit knowing well that these Khasra numbers are shown as evacuee property in the revenue record.

Further plea was sought to be raised that jurisdiction of the Court was barred under Section 27-A CPC. In the end of paragraph 8 of the written statement, following lines are sought to be added:-

The land in dispute is an evacuee property in which the defendants have developed a park and have installed a tubewell connection in the year 1992. The park in which the land in dispute is alleged to be situated is a part of the town planning scheme part II Krishna Nagar which was started by the defendants in the year 1960 and was duly approved by the Government of Punjab vide notification issued on 28.04.1971. Prior to it the Government of Punjab has issued the notification no.1392-CIII-60/14410 dated 11.04.1960 and declared the area falling in the scheme as unbuilt and the then

Administrator of the defendants vide order dated 25.08.1960 had decided to republish the same. The scheme was duly notified to the public at that time by publishing public notice of the scheme in the news papers i.e. The Daily Tribune Ambala Cant, The Daily Tarjman Ludhiana, The Daily Samaj, Ludhiana in the year 1964. The detailed facts have been mentioned in the preliminary objection no.7 and 8 which may be treated as part of this para of the written statement also.

It was stated that the said amendment is essential for the just decision of the case.

I have heard learned counsel for both the parties and have also carefully gone through the file.

Learned counsel for the petitioners has argued that the amendment is necessary for the just decision of the case and has placed reliance upon the authorities of the Apex Court in Surender Kumar Sharma vs. Makhan Singh, 2009(4) RCR (Civil) 597, Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481 and Mahila Ramkali Devi and others vs. Nandram (D) Thr. LRs and others, 2015(5) RCR (Civil) 562. It has been further contended that the amendment to the CPC was made in the year 2002. Suit is prior to the same and therefore, the stringent provisions of amended Order VI Rule 17 CPC will not be applicable in the present case.

I am of the view that the proposed amendment is unnecessary and malafide, aimed at delaying the disposal of the appeal. It was simple suit for permanent and mandatory injunction, which is dragged in the trial Court for 10 years. Appeal remained pending for 5 ½ years when the

defendants certainly woke up to file an application for amendment. If the jurisdiction of the Court is barred, it is a legal ground and can otherwise be argued even without taking written objection. Similarly, if the site plan filed by the plaintiff is incorrect, the defendants could always argue that the site plan proved by the plaintiff is incorrect. Therefore, these two amendments are absolutely unnecessary. Regarding addition sought to be made in paragraph nos.7 and 8, it is to be noted here that some facts are sought to be brought on record, which were within the knowledge of the defendants.

It is a simple suit for permanent and mandatory injunction. The sole purpose of the amendment is to delay the disposal of the appeal. In fact, the appellants have succeeded to a great extent by obtaining the stay order in the present revision, which is pending for the last six years.

I am of the view that the procedural law, as applicable at the time of filing of the application, will be applicable. When the application for amendment was filed, procedural law applicable at that time will be applied and not the law which was applicable at the time of filing of the suit. Proviso to Order VI Rule 17 CPC 1908 makes it clear that if the proposed amendment was within the knowledge of the party, the same is not to be allowed. Amendment is otherwise aimed at delaying the disposal of the appeal. There is no illegality or infirmity in the impugned order.

Resultantly, the present revision petition stands dismissed.

09.02.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No