

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4980 of 2018 (O&M)

Date of Decision: 05.09.2018

Gursewak Singh

.....Petitioner

Vs.

Sukhdev Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Ajay S. Dhillon, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

CM No. 19067-CII-2018

By this application, advancement of the date of hearing in the accompanying petition is sought.

As the date of hearing is fixed for today itself, this application has been rendered infructuous and is disposed of as such.

CM No. 17715-CII-2018

By this application, the applicant-petitioner seeks to place on record photographs, the site plan submitted by the petitioner-defendant and the site plan submitted by the respondents-plaintiffs, as Annexures P-6 to P-8, respectively.

The application is allowed subject to all just exceptions and the aforesaid photographs and site plans are ordered to be taken on record as Annexures P-6 to P-8.

CR No. 4980 of 2018

Vide the impugned order, the suit of the respondent-plaintiffs has

been allowed to be amended by the trial Court, by which amendment a decree of mandatory injunction is sought by them against the petitioner-defendant, directing him to remove a pavement stated to have been constructed by him outside his house, abutting the metaled portion of the public road.

Learned counsel for the petitioner submits that, firstly, the amendment has been allowed at a stage when arguments were being addressed before the trial Court and secondly, the respondents-plaintiffs have themselves also encroached upon the side of the road, with the boundary wall of his house in fact jutting out onto the encroached portion.

He further submits that the amendment should not have been allowed, it having changed the entire nature of the suit.

It is to be noticed that in the impugned order it has been stated by the trial Court, that as per the case of the respondents-plaintiffs, the petitioner encroached upon public land by increasing the brick level (abutting the metaled portion of the road), during the pendency of the suit, which originally was filed seeking only a decree of prohibitory injunction, restraining the petitioner from doing so.

The encroachment had been made, as per the contention of respondent-plaintiffs, during the pendency of the suit, with the petitioner initially having been proceeded against *ex parte* but with that order having been set aside, and the application for amendment moved after that order had been set aside.

In the aforesaid circumstances, I do not see any infirmity in the impugned order, with it obviously only being an amendment in the plaint that has been allowed in the aforesaid circumstances.

Naturally, if the respondents-plaintiffs are unable to prove what is contended in the amended plaint, the trial Court would adjudicate upon the matter

accordingly.

As regards the contention that the respondents-plaintiffs have themselves encroached upon a public road, remedy against any such alleged encroachment is always available with the petitioner.

Hence, without making any comment on the actual merits of the case of the respondents-plaintiffs or the present petitioner-defendant, this petition is dismissed.

September 05, 2018
nitin/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes