

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

**C.R. No.7389 of 2016
Date of Decision.23.05.2018**

Pankaj Jain

.....Petitioner

Vs

Mukesh Jain

.....Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Vivek Singla, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order dated 23.09.2016 (Annexure P-3) passed by the trial Court whereby the application for amendment of the plaint by incorporating the report of architect has been dismissed.

Mr. Ramesh Goyat, learned counsel appearing on behalf of the petitioner submitted that the plaintiff had filed the suit for permanent injunction and mandatory injunction against the respondent-defendant on the premise that the petitioner-plaintiff vide sale deed dated 28.4.2005 purchased the land comprised in Khewat No.448/349, Khata No.548, Killa No.84/15/2/2(0-11) and 84/16/1 (0-4) situated within revenue estate of Village Bhigan, Tehsil Ganaur, District Sonapat. Since the respondent-defendant being a strong and powerful person wanted to dispossess the petitioner-plaintiff, the suit aforementioned was filed. However, after the institution of the suit, plaintiff got the land demarcated through an Architect to ascertain the correct position and the Architect gave his report dated 17.10.2013. It is in that background, the cause of action arose to move an application for amendment of the plaint

(Annexure P-1) dated 6.10.2015. The aforementioned application was contested by the respondent-defendant vide reply (Annexure P-2).

However, the trial Court vide noticing the subsequent event, dismissed the application. The aforementioned decision of the lower trial Court is not sustainable in the eyes of law, for, the amendment sought to be incorporated in the plaint would help the Court in adjudication of the *lis*, particularly, in suit for injunction. No harm and prejudice would be caused to the respondent in case the amendment is allowed as it does not tantamount to altering the nature/cause of action of the suit, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Vivek Singla, learned counsel appearing on behalf of the respondent submitted that the report as noticed above is dated 17.10.2013 and the application for amendment was filed on 06.10.2015. No explanation has come forward in not moving the application immediately thereafter. Even otherwise, the architect can always be examined in support of pleadings as the evidence is not required to be pleaded, thus, urges this Court for dismissal of the revision petition.

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. Goyat, for, law of pleadings as per the provisions of Order 6 Rule 1 and 2 CPC is no longer in dispute. Pleadings has to be in brief and conscience. It is settled law that evidence is not to be pleaded. In case, the petitioner-plaintiff has obtained the demarcation report through the services of the architect, the same can be proved at the stage of evidence, for, it contains evidentiary value and would help

in proving the averment in the plaint, therefore, it is not necessary to plead evidence in the plaint. That is what is the import of the order of the trial Court.

In view of the aforementioned fact, I do not find any reason to interfere with the order passed by the trial Court as the same is perfectly legal and justified and cannot be said to be passed without jurisdiction. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No