

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

CR No.1609 of 2019

Date of Decision: 08.03.2019.

Piara Lal.

...Petitioner

Versus

Rami and others.

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rohiteshwar Singh, Advocate for the petitioner.

B.S.WALIA, J. (Oral)

1. Revision petition seeks setting aside of order Annexure P/4, dated 08.02.2019 passed by the learned Civil Judge (Junior Division), Mukerian, dismissing the petitioner-plaintiffs application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

2. Brief facts of the case leading to the revision petition are that the petitioner-plaintiff had filed a suit for permanent injunction to restrain the respondents/defendants from interfering in the suit house fully detailed and described in the head note of the plaint and shown in the site plan. During the pendency of the suit, order dated 16.05.2017 was passed restraining the respondents/defendants from interfering in the possession of the petitioner/plaintiff and directing maintenance of existing position of the suit house. However, despite knowledge of pendency of the suit, respondent/defendant Nos.3 and 4 dismantled the intervening wall 'AF' of the house of the petitioner-plaintiff and in spite of best efforts to stop respondents/defendants from doing so and

even approaching the village Sarpanch and local police the respondents/defendants did not mend their ways, therefore the petitioner-plaintiff moved an application praying for the following amendments:-

- a) In the head note and relief after the word site plan of plaintiff in the head note and the relief clause to be add 'consequently for mandatory injunction to direct the defendants No.3 and 4 to reconstruct the demolished middle portion of wall AF from point A1 to F1 as shown in the annexed site plan Annexure 'X; or in alternative permission be granted to plaintiff to raise the wall at the costs of defendants. before word in Abadi is to be added.
- b) In the body of the plaint, these new happening may kindly be allowed to be pleaded in new para 6(a) after para 6.(a) that in pendency and knowledge of the suit, defendants no.3 and 4 with help of other defendants forcefully and unlawfully demolish the intervening wall AF from the middle portion A1 to F1 shown in the annexed site plan Annexure 'X' of the eastern intervening wall of the house in subject matter. This infringes the privacy, security and fundamental rights of the plaintiff. Hence, the present application.

Learned counsel contended that the order dismissing the application was legally unsustainable and liable to be set aside in order to place new developments on record.

3. I have considered the submissions of learned counsel. In the examination in chief of the petitioner plaintiff by way of affidavit dated 25.07.2017, there is no mention about the dismantling of the wall and it is only in the cross-examination that the petitioner/plaintiff stated that that there was no wall between the land of Davinder Singh and the property in dispute and further voluntarily stated that Davinder Singh dismantled the wall in the year 2016, whereas the application for amendment was made in the month of August, 2018. Issues were framed on 17.05.2017. It is not the case of the petitioner that the developments are of the period subsequent to the filing of affidavit of the petitioner/plaintiff by way of examination in chief. Besides, in the written statement, the respondents-defendants had taken up the stand that there was no wall between the property of Davinder Singh and the property in dispute. Petitioner-plaintiff led evidence and closed the same on 18.01.2018. Thereafter the case was fixed for the evidence of the respondents/defendants when the application was moved. Earlier the suit had been filed for permanent injunction whereas the application under Order 6 Rule 17 CPC is for amendment of the plaint so as to seek the relief of mandatory injunction. The amendment prayed for would not only change the nature of the suit but would also cause prejudice to the respondents/defendants on account of evidence of the petitioner/plaintiff already having been closed.

5. Accordingly, in view of the position as noted above and taking into account all aspects of the matter as also the fact that as per the stand of the petitioner/plaintiff himself the facts sought to be incorporated by way of amendment of plaint are prior to the framing of

issues and petitioner/plaintiff despite having knowledge of the same did not move an application for amendment at an earlier stage, I am of the considered view that the petitioner has failed to make out a case for being allowed to amend the plaint at this stage in view of the proviso to Order 6 Rule 17 of the CPC. Thus, finding no merit in the revision petition, the same is dismissed in limine.

(B.S.WALIA)
JUDGE

08.03.2019
rajesh.k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No