

CR No.5433 of 2019
Date of Decision: 5.9.2019

Parminder Singh

.....Petitioner

Versus

Varinder Singh and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Harjot Singh Bedi, Advocate, for the petitioner.

NIRMALJIT KAUR, J. (ORAL)

While praying for setting aside the order dated 30.7.2019, learned counsel for the petitioner submitted that the Court below has amended the plaint of the respondent-plaintiff by passing a single line order without considering the fact that the very nature of the suit has been changed and he has been allowed to substitute including another property.

Firstly, a perusal of the order dated 30.7.2019 shows that that application of the respondent-plaintiff was allowed after taking into consideration various judgments of the Hon'ble Apex Court. The argument that the respondent-plaintiff could not have been allowed to change the nature of the suit, has no merit in view of the stage as well as nature of the case. It is a suit for partition as well as permanent injunction and therefore, in a suit for partition, a plaintiff has right to include all the properties and the lapse in not including all the properties would be fatal to the case and therefore, the amendment sought at the very initial stage should not normally be rejected.

Learned counsel for the petitioner also has not been able to bring to the notice of this Court any bar to amend the suit to the extent of

including another piece of property in a suit for partition. The argument that the said property does not belong to the respondent-plaintiff, is a subject matter of proof before the trial Court for which the respondent-plaintiff will have the opportunities to lead evidence with equal opportunity to the petitioner to lead evidence in defence. Similarly, no fault can be found with the permission to allow the respondent-plaintiff to seek mandatory injunction instead of permanent injunction in a suit for partition.

However, there is a merit in the argument that at least cost should have been imposed before allowing the said amendment. This Court may have issued notice in the revision petition, but taking into account that issuing notice of motion would only delay the suit, which would not be in the interest of the plaintiff-respondent himself, accordingly, the impugned order dated 30.7.2019 also is made subject to deposit cost of ₹ 50,000/- to be paid to the petitioner-defendant.

Disposed of accordingly.

(NIRMALJIT KAUR)
JUDGE

5.9.2019
sharmila

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