

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6781 of 2017 (O&M)
Date of Order: 30.05.2022

Gurvinderdeep Singh and another ..Petitioners

Versus

Vikramjit Singh and another ..Respondents

CR-7186 of 2017 (O&M)

Gurvinderdeep Singh and another ..Petitioners

Versus

Vikramjit Singh and others ..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.C.Sharma, Advocate, for the petitioners.
Mr. Vikas Singh, Advocate, for respondent no.1.

ANIL KSHETARPAL, J(Oral)

The plaintiffs are the petitioners herein. They have filed a suit for grant of decree of permanent injunction restraining the defendants, their attorneys, assignees, representatives, agents from interfering in the peaceful use and enjoyment of passage comprised in khasra no.76. The plaintiffs also pray for restraining the defendants from raising construction over the land used as passage.

During the pendency of the suit, the plaintiffs filed two applications for permission to amend the plaint as well as the application under Order 39 Rule 2A CPC. Both the parties have already concluded their evidence. The trial court, suo-moto, appointed a Local Commissioner, who has submitted a report. The plaintiffs claim that due to inadvertent error, khasra no.76 has been mentioned in the plaint, whereas, it should be khasra

no.32.

The trial Court has dismissed both the applications resulting in filing of the present revision petitions.

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioners contends that there was an inadvertent error in the plaint as the passage is 76 karam wide whereas it is located in khasra no.32.

On the other hand, the learned counsel representing the respondents (defendants) submits that the entire case of the petitioners is sought to be changed at the stage when the suit is at the fag end.

Order 6 Rule 2 CPC, provides that only the material facts in a precise manner are required to be incorporated in the pleadings. Fundamentally, the plaintiffs have already asserted that there is a passage. It is sought to be encroached upon by the defendants. The burden lies on the plaintiffs to prove the aforesaid fact. Whether the passage is in khasra no.76 or 32, is a matter of evidence. There is no provision to incorporate the evidence sought to be led in its plaint/written statement/replication.

Keeping in view the aforesaid facts, the revision petitions are disposed of while directing the Court to decide the matter, If it finds that the defendants have encroached upon the passage whether comprised in khasra no.76 or 32, the Court shall pass appropriate orders. It may be noted here that the court has the power to mould the decree to ensure substantive justice in the facts and circumstances of the given case.

Needless to observe that the trial Court will make sincere endeavours for expeditious conclusion of the trial.

All the pending miscellaneous applications, if any, are also disposed of.

May 30, 2022
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(ANIL KSHETARPAL)
JUDGE

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