

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

CR-8049-2017 (O&M)

Date of Decision: October 27, 2022

Gagandeep Singh

..... Petitioner

Versus

Ravinder Kumar and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. U.K. Agnihotri, Advocate for the petitioner.
Mr. S.S. Momi, Advocate for respondent No.1.

HARKESH MANUJA, J.

By way of present revision petition, challenge has been made to the order dated 31.08.2017 (P-6) passed by Civil Judge (JD), Pehowa; whereby application for seeking amendment of plaint filed at the instance of respondents/ plaintiffs has been allowed.

The facts leading to the present case are that the respondents/ plaintiffs filed a suit for permanent injunction claiming themselves to be owner of 10 marlas of land situated in Village Chammu, Tehsil Pehowa, District Kurukshetra, comprised in Khewat No.53/47, Khatoni No.89, Khasra No. 1231/2/1 (0-7) Gair Muimkin house, Khasra No. 1231/2/2 (0-3) Gair Mumkin Plot, Hadbast No. 294, vide jamabandi for the year 2010-2011. The suit was filed on 26.05.2015. Considering that the dispute between the parties was related to the identification and measurement of the land, learned trial Court vide its order dated 23.07.2015 ordered appointment of Local Commissioner so as to carry out necessary demarcation and submit his report on 13.08.2015. Accordingly, Halqa Kanungo, Ismilabad visited

the spot on 24.10.2015 and submitted his report before the learned trial Court.

Based on the report dated 24.10.2015 which recorded encroachment of 127.6 sq. yards of land (5 marlas) forming part of Khasra No. 1231/2/1 and 1231/2/2, the respondents/ plaintiffs moved an application dated 07.01.2016 seeking amendment of plaint so as to incorporate the prayer for possession over the encroached area of 127.6 sq. yards i.e. about 5 marlas. The following was the amendment sought to be introduced:-

“Para 6A. That during the pendency of the present suit, Halqa Kanungo, Ismailabad was appointed as Local Commissioner by this Hon’ble Court on 23.07.2015 to visit the suit land and to carry out the demarcation and measurement of the suit land and to prepare rough site plan. As per the above said orders, has issued notice to the parties and has visited the suit land on 24.10.2015 and he has demarcated the suit land i.e. Khasra No. 1231/2/1 and 1231/2/2 by metes and bounds with the help of Halwa Patwari in the present of both the parties and it was found that the defendants have encroached upon 1276 sq. yards of land of the plaintiffs out of khasra numbers 1231/2/1 and 1231/2/2 and has merged the same in their khasra number i.e. 1231/3. The Halqa Kanungo has also prepared the rough site plan and the encroached land of the plaintiffs has been shown in green colour in the site plan annexed with the demarcation report, prepared by the Halqa Kanungo, which has already been submitted by him before this Hon’ble Court. The said demarcation was conducted in the presence of defendants and other persons of the locality. The list of persons present at the time of demarcation, is also attached

with the demarcation report submitted by the Halqa Kanungo. As per the report of the Halqa Kanungo dated 24.10.2015, it is crystal clear that the defendants have illegally encroached upon 1276 sq. yards i.e. about 5 marlas of land of the plaintiffs comprised in Khasra No. 1231/2/1 & 1231/2/2, though they have no right to encroach the said land....”

Prayer Clause:

“It is, therefore, prayed that a decree for mandatory injunction directing the defendants to hand over the vacant possession of the encroached portion of the suit land i.e. 1276Sq. yards to the plaintiffs with a consequential relief of permanent injunction restraining the defendants from interfering, creating any hindrance and obstruction in the peaceful ownership and possession of the plaintiffs over the suit land i.e. 10 marlas owned and possessed by the plaintiffs and fully detailed in para No.2 of the plaint and further restraining the defendants from further encroaching and dispossessing the plaintiffs from the suit land, in any manner.”

The trial Court vide its order dated 31.08.2017 allowed the amendment as prayed for by the respondents/ plaintiffs. It is the said order dated 31.08.2017 which has been impugned by way of present revision petition.

Learned counsel for the petitioner submits that once as per the plaint, the stand taken by the respondents / plaintiffs was that they are owners to the extent of 10 marlas of land out of Khasra No. 1231/2/1 & 1231/2/2, their prayer for seeking amendment of plaint so as

to grant possession of 1276 sq. yards of land could not have been allowed as prayed for in their application.

On the other hand, learned counsel for respondent No.1/ plaintiff clarifies that there seems to be some typographical error in para 6A which is sought to be incorporated by way of amendment. He further submits that infact the prayer sought for is only regarding 5 marlas of land i.e. 127.6 sq. yards and not 1276 sq. yards of land.

Having heard learned counsel for the parties and gone through the paper-book, I do not find any merit in the present revision petition. The suit for permanent injunction was filed at the instance of respondents/ plaintiffs on 26.05.2015. Thereafter, Local Commissioner was appointed in pursuance of an order dated 23.07.2015 passed by learned trial Court, who submitted his report on 24.10.2015, giving the details of encroachment made over Khasra Nos.1231/2/1 & 1231/2/2 and based thereupon, an application seeking amendment of plaint was immediately moved on 07.01.2016 i.e. without causing any delay.

The contention raised on behalf of learned counsel for the petitioner as regards the veracity and validity of the report submitted by the Local Commissioner, is a matter of evaluation of evidence which has to be gone into by the learned trial Court during the trial. It has also been pointed out that before the filing of application for seeking amendment of plaint, the petitioner/ defendant has not even filed his written statement. The amendment sought for, in fact, would help the trial Court to adjudicate upon the dispute between the parties in a complete and effective manner. More than that, the amendment prayed

for would even help in avoiding multiplicity of litigation between the parties. Once the amendment application has been filed at the instance of respondents/ plaintiffs at the initial stage and that too, based upon the report submitted by the Local Commissioner, even before the filing of written statement by the petitioner-defendant, I do not find any merit in the present revision petition. Thus, the same is dismissed

Pending miscellaneous application(s), if any, shall also stand disposed of.

October 27, 2022
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>