

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-9009-2017 (O&M)
Date of decision: 11.07.2022

Gurcharan Singh

... Petitioner

Vs.

Ludhiana Improvement Trust, Ludhiana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjeev Gupta, Advocate and
Mr. Vaibhav Sehgal, Advocate
for the petitioner.

Ms. Kavita Arora, Advocate
for the respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 07.12.2017 passed by the Civil Judge (Jr. Divn.), Ludhiana, in Civil Suit No.46672 of 11.08.2012, vide which an application under Order 6 Rule 17 CPC filed by the respondents-defendants to amend the written statement, was allowed.

Brief facts of the case are that petitioner-plaintiff filed a suit for specific performance of agreement/allotment letter dated 11.04.1986 with regard to property bearing plot No.96-C/10-A, measuring 250 square yards, executed by defendant No.1-Trust. As a consequential relief, the petitioner also filed suit for decree of mandatory injunction directing the defendants to execute

and register the sale deed of the suit property in favour of the plaintiff on payment of balance sale consideration and another consequential decree for permanent injunction restraining the defendants from alienating or disposing of the property to some third person. The respondents-defendants filed written statement and contested the suit on the grounds set up in the written statement, wherein it is stated that aforesaid plot No.96-C/10-A measuring 250 square yards was sold by defendant No.1 in restricted open auction held in January, 1984 in favour of M/s Raj Transport Organization, however, the construction was not raised. It is further stated that possession of the plot was delivered and construction has been raised. Now the application has been filed under Order 6 Rule 17 CPC to add one para No.3-A in the written statement, which reads as under: -

“That the employees of the defendants inspected the property in dispute on 09.05.2017 and measured the property in possession of plaintiff Gurcharan Singh from its outer side and on measurement the property in possession was found as 45 ft x 100 ft and its area comes to 500 sq. yards and plaintiff Gurcharan Singh has constructed a building on said area measuring 500 sq. yards. The construction raised by the plaintiff is not on any plot but is on the pavement area which has also shown as pavement area in layout plan of Truck Stand Scheme, Ludhiana. The plaintiff Gurcharan Singh claimed his possession on an area measuring 250 sq. yards in the plaint but now he is in illegal possession of an area measuring 500 sq. yards on which he has illegally constructed

building as such the plaintiff is not entitled to any relief from this Hon'ble Court."

The trial Court, while allowing the application under Order 6 Rule 17 CPC, passed the impugned order, by making the following observations: -

"I have heard learned counsel for the parties and have perused the material available on record carefully.

Despite the fact that allegations have been levelled by the plaintiff that the present application simply shows the laxity on the part of the officials of the defendant LIT, this court is of the opinion that the facts sought to be introduced by the defendants through amendment qua encroachment of property by the plaintiff allegedly was done after the filing of the written statement when the officials of defendant LIT Inspected the property in dispute at the time of leading evidence. It is clear from the same that the despite due diligence, the defendants could not have taken this plea earlier at the time of filing written statement being a subsequent event. The set of facts is relevant for the present controversy in hand and will be helpful in adjudicating the matter properly. As such, in the interest of justice, the present application under Order 6 Rule 17 CPC filed by defendants is, hereby, allowed. Defendants are directed to file amended written statement on 13.12.2017. Amended replication if any be also filed by the plaintiff thereafter."

Learned counsel for the petitioner submits that proposed amendment do not relate to the relief claimed by the petitioner in the suit, as the suit is filed for enforcement of agreement/allotment letter issued by the respondent-trust with a consequential relief of mandatory injunction and to execute the sale deed and not to alienate the property, which is subject matter of the civil suit, for which the defendant-trust has a right to seek possession, in

accordance with law.

Learned counsel for the respondents submits that in fact, possession of 250 sq. yards was given to the petitioner-plaintiff, however, he encroached another plot measuring 250 sq. yards, therefore, it is necessary to amend the written statement. Learned counsel, however, submits that in order to bring this fact that the petitioner has encroached upon some more area, apart from the plot, which is subject matter of the allotment letter, therefore, it is necessary to amend the written statement.

After hearing learned counsel for the parties, I find merit in the present petition.

In terms of provisions of Order 6 Rule 17 CPC, amendment can be made in written statement, which is relevant to deny the fact as pleaded in the plaint, whereas the respondent-defendant want to set up a new case with regard to some encroachment made by the petitioner qua which no relief has been prayed in the main suit.

Accordingly, this petition is allowed and the impugned order dated 07.12.2017 is set aside.

It will be open for the respondent-trust to take possession of any encroached property, in accordance with law.

[ARVIND SINGH SANGWAN]
JUDGE

11.07.2022
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No