

CR-3871-2018 and CR-3475-2018

2023:PHHC:109274

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

Date of Decision: 16.08.2023

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(I) CR-3871-2018

EXECUTIVE OFFICER M.C.SANGRUR

.....Petitioner

Versus

SANJAY GARG AND ORS

.....Respondents

(II) CR-3475-2018

SANJAY GARG

.....Petitioner

Versus

EXECUTIVE OFFICER M.C.SANGRUR AND ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Zaheen Kaur, Advocate
for the plaintiff/petitioner in CR-3475-2018
for the defendant/respondent No.1 in CR-3871-2018.

Mr. Ashish Verma, Advocate
for the petitioner in CR-3871-2018,
for the defendant/respondent No. 1 in CR-3475-2018.

GURBIR SINGH, J (ORAL)

1. The challenge in both the petitions is to set aside of the order dated 27.02.2018 passed by learned Additional Civil Judge (Senior Division) Sangrur vide which the learned trial Court has partly allowed the application under Order 6 Rule 17 CPC for amendment of plaint.

2. The parties are being addressed as per the original plaint.

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3. One petition is filed by the plaintiff and other petition is filed by the defendant No.1 against the order dated 27.02.2018 whereby application moved by the plaintiff for amendment of the plaint is partly allowed.

4. The brief facts as culled out from the paper book are that the plaintiff- Sanjay Garg filed suit against Executive Officer of Municipal Committee and Superintendent of PWD (B&R) and State of Punjab for mandatory injunction directing the defendants to close and fill the drain and to make arrangements for the proper disposal of the water of the colony and to remove the filthy water entered and collected in the above mentioned land and for permanent injunction restraining the defendants from allowing the flow of dirty water and also for mandatory injunction directing the defendants to reconstruct the boundary walls in the alternative for recovery of damages.

5. Plaintiff filed an application for amendment of the plaint and sought amendment of the plaint as under:-

- a) *The following words will be added in Head Note A of the plaint as well as in para 1 of the plaint, after the word "measuring and before the word 74 kanals": about 4 Acres out of'.*
- b) *That the following words be added in the end of head note (C) as well as in the sixth line of head note (D):
"and on account of loss of rent"*
- c) *That following lines will be added in the end of para No. 1 of the plaint:
"That the suit land has fallen into the share of the plaintiff in a family settlement and the ownership of the land has been transferred in the name of the plaintiff vide Registered Deed No.2323 dated 12.09.2016 and accordingly mutation in the name of the plaintiff has also been sanctioned. The plaintiff has become sole owner in possession of the land.*
- d) *The para No. 7A will be added in plaint after para No 7 by way of amendment, which is as under: -*

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7A That the suit land of the plaintiff is brick paved plinth and is used for renting out to Government Agencies as well as private parties for the purpose of processing and storage of food grains and the plaintiff has been earning an income of about Rs 1,00,000/- per month as rental income from the said land Earlier the land/plinths had been divided into three parts and the plaintiff used to rent out each part in different name ie. First part measuring about 2.5 acre in the name of "Om Parkash & Sons", second part measuring about half acre in the name of "Sanjay Garg" and third part measuring about 1 acre in the name of "Sanjay Garg and Rajesh Garg". Shri Om Parkash is the father of the Plaintiff and Shri Rajesh Garg is the brother of Plaintiff. However, all the management, repairs, renting out, raising of bills and receiving of rent etc. has always been done by the Plaintiff. Sanjay Garg. Before renting it out every year, the plinths and boundary wall etc, used to be repaired and the land was made storage worthy. Storage worthy certificate, no pending repair certificate etc. used to be issued by the Government agencies before taking the possession / storing of the food grains. Plaintiff earned Rs. 6048/- per month from renting out the first part of the plinth in the name of Om Parkash & Sons', Rs. 2592/- per month for second part in the name of 'Sanjay Garg' and Rs. 3388/- for the third part in the name of Sanjay Garg & Rajesh Garg totaling Rs. 12028/- per month from 1997 to 30/09/1999. However, the rent was increased to Rs. 12600/- Rs. 5184/- and Rs. 8100/- per month for the first, second and third party of the plinths respectively totaling Rs. 25884/- per month from 01/10/1999 onwards. The plinths in this manner continued to be rented out to government and private agencies from time to time. The rental value gets increased every year due to inflation and hype in market rates with the passage of time and also due to shortage of space near the grain market. Sangrur, the plaintiff's land being most suitable for the said purpose. However, in the year 2009, the opposite parties started damaging the boundary walls and plinths and this process of damaging is continuous till date. The flooring of the first part of the plinth has been totally damaged and the said part has been converted in to a sewage dump. The second part of the plinth being situated adjacent to and in the same complex has also been damaged and rendered useless: Almost entire boundary wall has been damaged. That due to the impairment of the value and utility of the said land, the plaintiff's monthly income from the said land has drastically reduced. Due to accumulation of water in the land, 2/3rd part of the land had become useless and the dirty water continued to be accumulated in the suit land day-by-day, rendering the land a sewage dump. The income of the plaintiff from the above said land has considerably and continuously getting reduced due to accumulation of dirty

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water in the suit land. The plaintiff is presently able to rent out only 3rd part of his land that too at lower rates because of the damage to the boundary wall and the cause of inhabitable conditions occurred due to collection of filthy water and dumping of garbage and human waste by the defendants. Even that is also not a regular income. The plaintiff, therefore, claims a compensation of Rs.90,000/-PM for the year 2011-12. Rs.1 lakh per month for the year 2012-13, Rs.1.20 Lacs per month for the financial year 2013-2014, Rs 1.50 Lacs per month for the financial year 2014-2015, Rs. 2 lacs per month for the financial year 2015-2016 and Rs.2.50 Lacs per month for the financial year 2016-2017 and onwards/future compensation in the same ratio or as may be assessed by this Hon'ble Court.

- e) In 14th line of para 10 of the plaint the word "in the alternative" will be substituted with the following words: "for loss of rent and a decree for recovery". Similarly in the end of para 10, the following words will be inserted: "and for loss of rent as claimed in para 7A of the plaint"*
- f) that the alternative relief for recovery pleaded in the plaint will be treated as main relief and not as an alternative relief. The words "in the alternative" will be deleted from the heading as well as from the prayer clause of the plaint.*

13. *That the prayer clause will also be accordingly amended."*

6. The defendants contested the application and filed reply.

7. Learned counsel for the plaintiff has argued that plaintiff has already pleaded that he is a joint owner and co-sharer in the land measuring 74 kanals 10 marlas situated in Sangrur, District Sangrur. The defendant No.2 as per instructions of defendant No.1 constructed a drain crossing underneath the main Sangrur-Ubhawal Road to drain out the waste water of the residents of basti situated opposite to the land of the plaintiff. In para Nos. 8 and 10 of the plaint, the plaintiff has specifically pleaded about damage to the property caused over a period of time and for restoring the property in its original position. The learned trial Court allowed the application for mesne profits for causing damage to the suit property during the pendency of the suit and not prior to that. The amendment

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with regard to the mesne profits prior to filing of suit deserves to be allowed. Once the application for amendment is allowed, then amendment with regard to claiming mesne profits prior to the filing of suit was also required to be allowed. It would not change the nature of the suit.

8. Learned counsel for defendant No.1 has submitted that application is filed at a belated stage. The trial of the case is at advanced stage. Part of cross examination of the plaintiff as PW-6 has already been recorded. The points which are raised by way of amendment were to be raised at the time of filing of the suit. The learned trial Court has wrongly observed that trial of case has yet not begun. The trial Court has wrongly allowed the application partly. The said application deserves to be dismissed in toto.

9. I have heard the submissions of the learned counsel for the parties.

10. The learned trial Court has held that law allows that subsequent events be liberally incorporated in the plaint. So amendment with regard to subsequent events, regarding acquisition of title in the suit property and alteration in the suit property by defendants during pendency of the suit leading to diminution of value of suit property for the plaintiff, has been allowed. The amendment regarding claim of plaintiff seeking relief of mesne profits for 10 years preceeding the filing of suit has been declined on the ground that it would amount to changing the basic nature of the suit. It is held that the said relief could be sought at the time of filing of the suit. The plaintiff having failed to claim the said relief, the plaintiff has given up the said relief.

11. The law of amendment of pleadings is very liberal. In case of Abdul Rehman and Ors. Vs. Mohd. Ruldu and Ors., reported as 2012 (4) RCR (Civil) 481, it is held by Hon'ble Apex Court that the main purpose of allowing the

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which are necessary for the purpose of determining the real controversy between the parties should be allowed if amendment does not change the basic nature of the suit. It is also held that a change in the nature of relief claimed shall not be claimed as a change in the nature of the suit. If the granting of an amendment really sub serves the ultimate cause of justice and avoids further litigation, the same should be allowed.

12. The learned trial court has allowed the amendment with regard to the subsequent events regarding acquisition of title in the suit property and regarding diminution value and utility of the suit property. The application for amendment is with regard to the claiming mesne profits for the period after filing this suit was also allowed.

13. Learned trial Court has wrongly held that the plaintiff has claimed relief of mesne profits for a period of ten years prior to filing of this suit whereas by way of amendment, plaintiff has claimed mesne profits for the years 2011-12, 2012-13 and 2013-14. The suit was filed in the year 2014. The plaintiff has already claimed alternative relief of recovery of damages. By way of amendment plaintiff is seeking compensation for a period of three years prior to filing of suit and also to compensate during pendency of suit and future compensation. Since compensation cannot be segregated for recovery damages so the learned trial Court has wrongly declined the said amendment.

14. Moreover, the case is still at the stage of leading the evidence of the plaintiff. The finding of learned trial Court that the trial of the case has yet not begun is a minor mistake in routine so the order cannot be considered illegal or wrong in this regard. Cause of action is not at all substituted by way of amendment so impugned order is hereby modified and application moved by

plaintiff for amendment of the plaint is hereby allowed but subject to payment of

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costs of Rs.5000/- be deposited in the account of the District Legal Services Authority.

15. Revision Petition filed by the plaintiff is allowed and the revision petition filed by defendant No.1 is dismissed.

(GURBIR SINGH)
JUDGE

16.08.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No