

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

Date of Decision: 16.08.2023

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(I) CR-4666-2018

SANJAY GARG

.....Petitioner

Versus

EXECUTIVE OFFICER M.C.SANGRUR AND ORS

.....Respondents

(II) CR-3861-2018

EXECUTIVE OFFICER M.C.SANGRUR

.....Petitioner

Versus

SANJAY GARG AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Amit Jhanji, Senior Advocate with.
Ms. Zaheen Kaur, Advocate for the petitioner in CR-4666-2018
for respondent No.1 in CR-3861-2018

Mr. Ashish Verma, Advocate for the petitioner in CR-3861-2018
for the respondent No. 1 in CR-4666-2018.

GURBIR SINGH, J (ORAL)

1. The challenge in both these petitions is to the order dated 27.02.2018, whereby the application under Order 6 Rule 17 CPC and another application under Order 1 Rule 10 CPC filed by the applicant- Sanjay Garg for adding para No. 8A in the application under Rule 39 Rule 2-A CPC and also impleading parties therein, have been partly allowed.

2. The brief facts as culled out from the paper book are that the applicant-petitioner- Sanjay Garg (herein referred as plaintiff-applicant) filed suit against Executive Officer of Municipal Committee and Superintendent of PWD (B&R) and State of Punjab (herein-after referred to as respondents-defendants),
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 wall in the alternative for recovery of damages. Alongwith suit, plaintiff also filed the application for temporary injunction, which was allowed vide order dated 13.05.2015. The extract of the order is as under:-

“Hence, the application of the applicant/plaintiff under Order 39 Rule 1 and 2 C.P.C is allowed and defendants are restrained from draining the dirty water of basti in the plot of the plaintiff and from throwing any waster material in the said plot even. It is also directed to the Municipal Committee, Sangrur to make the arrangements in order to restrain the water coming out of the drain made by them in the plot of the plaintiff.”

3. Thereafter, an application under Order 39 Rule 2-A CPC was filed for initiating contempt of Court proceedings against the defendants/respondents for violating the order dated 13.05.2015. Reply was filed.

4. During the pendency of the said application, one application under Order 1 Rule 10 CPC for impleading respondents No. 4 to 12 in the application under Order 39 Rule 2-A CPC was filed and another application for amendment of application under Order 6 Rule 17 CPC was also filed. Both the applications have been disposed of vide impugned order 27.02.2018.

5. The learned trial Court has held that it is mentioned that Rajesh Sharma has been working as EO of Municipal Committee on 13.05.2015 and A.S.Brar as S.E of PWD. Violation has been prior to filing of the petition. In the application, it is not mentioned which officer remained posted with MC at a particular point of time. Subsequent violation gave rise to different cause of action. If all are joined, then it would lead to misjoinder of causes of action, so only

Rajesh Sharma, EO and AS Brar, S.E were ordered to be impleaded as party and applicant was allowed to accordingly amend the pleadings.

6. Learned counsel for the plaintiff/applicant has submitted that learned trial Court has only impleaded Rajesh Sharma, working as EO of Municipal Committee and A.S.Brar working as SE with PWD as parties to the petition. Other officers, who remained posted after passing of injunction order dated 13.05.2015 and were incharge for day to day affairs of Municipal Committee Sangrur, were having full knowledge about passing of the order dated 13.05.2015, but they did not intentionally obey the order. On 16.11.2015, the Local Commissioner, inspected the suit property in the presence of both the parties and has reported that the water goes into the plot of the plaintiff through the drain and there was no proper drainage on the side of plot of plaintiff.

7. Learned counsel for the defendants-respondents has argued that both the applications have been filed to fill the lacunae in the main case as well as in the application. The parties can be impleaded only at the initial stage and the facts, which are ordered to be included in the pleadings, are already in the knowledge of the applicant-plaintiff. There is no explanation as to why the names of the parties, which are to be added, were not mentioned in the original application. The impugned order deserves to be set aside.

8. I have heard the submissions of the learned counsel for the parties. The suit has been filed against the Executing Officer, Municipal Committee, Sangrur and also against the Superintending Engineer, PWD (B&R). Vide order dated 13.05.2015, the defendants have been restrained from draining the dirty water of Basti in the plot of the plaintiff and from throwing any waste material from the said plot.

9. The learned trial Court held that in the application, it is only mentioned that Rajesh Sharma was working as EO on 13.05.2015 and A.S.Brar was working as Superintending Engineer of PWD at that time. The application under Order 39 Rule 2-A CPC has been moved on 16.02.2016, so application pertains to the violation prior to the said period. The persons, who were posted afterwards, cannot be impleaded as party for violating the order subsequent to the filing of application under Order 39 Rule 2A CPC.

10. The learned trial Court has rightly held that if violation is done by the subsequent officers that gave a fresh cause of action and plaintiff cannot be allowed to club the subsequent cause of action. The period of posting of the remaining officers is not mentioned in the application. Since, Executing Officer of Municipal Committee and Superintending Engineer of the PWD, who were posted at the time of the passing of the order, have been impleaded for violation of the order of injunction. So, there is no illegality in the order passed by the learned trial Court, so both these petitions being without merit stand dismissed. However, plaintiff is free to move separate application with regard to subsequent cause of action.

11. Before parting with order, it is brought to the notice of the concerned Court that application under Order 39 Rule 2-A is required to be registered and tried separately from the main suit. If it is not separated yet, then the application under Order 39 Rule 2-A be separated from the main suit and be registered separately. The learned District Judge concerned shall ensure compliance.

(GURBIR SINGH)
JUDGE

16.08.2023

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No