

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No.7031 of 2018

Date of Decision: 12.01.2023

Gram Panchayat, Village Mitthi, Tehsil Siwani, District Bhiwani

..... Petitioner

Versus

Jogender Singh and Others

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sudhanshu Makkar, Advocate for the petitioner.

Mr. Mohit Garg, Advocate for the respondent No.1.

Nidhi Gupta, J.

Prayer in the Revision Petition is for setting aside impugned order dated 27.09.2018 Annexure P3 whereby amendment application moved by respondent No. 1/plaintiff under Order 6 Rule 17 CPC has been allowed by the learned trial Court.

Brief facts of the case are that respondent No.1/plaintiff had filed a Civil Suit for permanent injunction against the proforma-respondent Nos. 5 and 6, and petitioner/defendant No. 3 to the effect "*that the defendant-State of Haryana and other defendants be restrained from constructing stadium in the land other than Khasra No.52//16(8-0), 17(8-0), 24(8-0), 25(8-0) located at village Mitthi, Tehsil Siwani, District Bhiwani, which is earmarked and approved by State of Haryana and not to raise construction of any sort in Khasra No.271min//230 or its part thereof and defendants be further sought to be restrained from erecting any gate etc. or to demolish wall of adjacent Government Senior Secondary School located*

on eastern side of the aforementioned Khasra numbers and thus, to make a new passage towards School, on the basis of evidences of all kinds, both oral and documentary”.

During pendency of the Suit, respondent No.1/plaintiff moved an application dated 24.04.2018 Annexure P1 under Order 6 Rule 17 CPC for amendment in plaint to the effect that the defendants be directed to remove wrongful and illegal construction raised by them in Khasra No.165 measuring 27 kanal 9 marla and restore boundary wall of the School to its original possession. By way of impugned order dated 27.09.2018, Id. trial Court has permitted respondent No. 1/plaintiff to amend the plaint. It is this order which is in challenge before this Court by way of present Revision Petition.

It is inter alia submitted by learned counsel for the petitioner/defendant/Gram Panchayat that perusal of plaint shows that by way of present suit injunction had been sought against the petitioner/defendant that they be restrained from constructing stadium in the land other than Khasra No.52//16(8-0), 17(8-0), 24(8-0), 25(8-0) located at village Mitthi, Tehsil Siwani, District Bhiwani, however, now by way of amendment, the respondent/plaintiff has sought mandatory injunction against the petitioner/defendant to remove construction raised by them in Khasra No.165 measuring 27 kanal 9 marla. It is submitted that by way of the amendment, a new Khasra number has been introduced by the respondent/plaintiff with mala fide intent and therefore, an attempt has been made to change the very nature of the Civil Suit.

It is further submitted that notice in the present Revision Petition was issued by this Court on 23.10.2018 whereby operation of the impugned order was also stayed. It is submitted that much water has flown under the bridge in interregnum and the stadium which was already 90% constructed at the time of filing the Civil Suit, now stands fully constructed.

It is further stated that before filing suits of present kind, leave of Court has to be sought under Section 91 CPC. However, in the present case, no such leave has been taken by the respondent/plaintiff.

It is further pointed out that only respondent No.1/plaintiff is pursuing the matter and plaintiff Nos.2, 3 and 4 had even made a statement before the learned trial Court that their signatures had been forged on Civil Suit.

It is further stated that respondent/plaintiff is causing great harassment to the Gram Panchayat and creating hindrance in carrying out its works for public welfare with mala fide intention due to party politics. Learned counsel refers to **Civil Appeal No.2019 of 2007 titled as “Usha Balashaheb Swami & Others Vs. Kiran Appaso Swami & Others”** and **Civil Appeal No.6921 of 2009 titled as “Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others”** to submit that in any application under order 6 Rule 17 CPC, bona fide of the applicant has to be seen, and in the present case the bona fide of the respondent No.1/plaintiff is questionable. It is further submitted that the stadium has been constructed over land owned by Gram Panchayat with prior approval of the State Government and with the funds provided by the State Government. It

is submitted that present suit is nothing but misuse of due process whereby the respondent/plaintiff is trying to create hurdle in the development works undertaken by the petitioner/Gram Panchayat which development works have been duly approved by the respondent-State. It is submitted that the stadium has been constructed in larger public interest and on demand of village residents and it is only for this reason that no one else is supporting the respondent/plaintiff in his nefarious and ill-intended suit.

In response, it is submitted by learned counsel for respondent No.1/plaintiff that it is acknowledged that presently, the stadium stands constructed yet, in the interest of justice it is necessary to demolish the stadium otherwise his entire Civil Suit will be rendered infructuous. It is further stated that the remaining respondents No. 2, 3, and 4/plaintiffs had signed the Civil Suit of their own free will however, now under pressure of the petitioner/Gram Panchayat had resiled and therefore, withdrawn from the present litigation which he is admittedly pursuing alone. It is further stated that the petitioners have lied at every step and attempted to mislead the Courts. It is further submitted that amendment in the plaint was necessitated on account of the fact that the petitioner/respondent had sought to mislead the learned Court below by stating that resolution dated 15.05.2017 was passed for construction of the stadium in Khasra No.53 and no construction is taking place in Khasra No.165. Vide order dated 20.01.2018, the learned trial Court had appointed Halqa Patwari as Local Commissioner to visit the spot after giving notice to both the parties and present a report of the existing state of affairs before the Court along with photographs. As per report of the Local Commissioner,

it was found that construction was being carried out by the petitioner/Gram Panchayat in Khasra No.165. Accordingly, vide order dated 29.01.2018, the learned trial Court had directed the petitioner to maintain status quo regarding the disputed stadium and not to raise further construction.

In rebuttal, it is clarified by learned counsel for the petitioner that the petitioner/Gram Panchayat is owner in possession of total land measuring 198 Kanal and 8 Marla, and School is constructed in land measuring 38 kanal and 8 marla comprised in Khasra No.165 min (32-0) and 166 (6-8). It is stated that the Gram Panchayat had sent a proposal along with resolution to State Government for construction of stadium wherein inadvertently proposal of only Khasra No.53 was mentioned in the resolution. Subsequently, when demarcation was carried out, it was revealed that in Khasra No.165 area of stadium is 27 kanal 9 marla and in Khasra No.53//20/21 and 68/1, the area of stadium is 4 kanal 19 marla. Accordingly, a second resolution was sent to the State Government. It is reiterated that the stadium already stands constructed and demolition thereof will cause not just financial loss, but also harm and loss to the students who are using the said premises. It is further submitted that the respondent/plaintiff has no locus to file the present suit.

I have heard learned counsel for the parties.

Objection of the plaintiff/respondent No. 1 as discernible from para 5 of his application for amendment Annexure P1, is as follows:

"That the Khasra No. 165 is reserved for School and due to construction, the students in the school would be disturbed and now, the expansion of school is impossible and in future, no other facility can be added in school. Due to this, the villagers and students would suffer losses, which cannot be compensated by any means."(Emphasis supplied)

However, as construction of the stadium was completed during pendency of the suit, the respondent No. 1/ plaintiff now by way of his application under Order 6 Rule 17 CPC for amendment of the plaint, prayed that the stadium so constructed be demolished, as inter-Alia, the whole land comprised in Khasra No. 165 is reserved for the School only and therefore, the petitioner has constructed the stadium wrongly and illegally in 27K 9M land comprised in Khasra No.165 after demolishing boundary wall of the school. It is further his case that due to construction of the stadium expansion of the school is now impossible and no other facility can be added to the school, and separate land is approved for construction of stadium.

Perusal of the Headnote of the plaint as reproduced hereinabove shows that Civil Suit was originally filed limited to only seeking permanent injunction in regard to Khasra No.52//16 (8-0), 17 (8-0), 24 (8-0), 25 (8-0). However, now vide the proposed amendment the plaintiff is seeking mandatory injunction to remove construction raised by the petitioner in Khasra No.165. Admittedly, the plaintiff seeks to make amendments in the headnote, as well as in the plaint, as also in the prayer clause of the plaint. In my considered view, this amounts to fundamental change in the nature of the suit, and can therefore, not be permitted.

Further, Order 6 Rule 17 CPC stipulates that:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Thus, as per proviso to the above provision, it was incumbent upon the learned trial court to come to a conclusion that in spite of due diligence, the respondent No.1-plaintiff could not have raised the matter before commencement of trial. However, the impugned order does not reveal any such conclusion on part of the learned Court below.

In the present case, Id. Counsel for the respondent No. 1/plaintiff has not disputed statement of Id. Counsel for the petitioner at the bar that 90% of the stadium already stood constructed at time of filing of the Civil Suit by the plaintiff. A perusal of the record of the present suit reveals that the same was registered on 27.11.2017, and application for amendment of the same has been filed a few months hence on 24.4.2018. Admittedly, stadium has been constructed by the petitioner after a) due approval from the State Government; b) in larger public interest; c) on demand of the village residents; d) with funds provided by the State Government. Evidently, the respondent No. 1/plaintiff is a vigilant citizen alive to the rights of the villagers. As such, it would be reasonable to presume that the plaintiff was aware of the transpiring of all the above facts before filing the suit. Thus, it would not be incorrect to conclude that requisite due diligence as stipulated under the above said proviso was not

exercised by the plaintiff prior to filing of the suit. The same cannot be allowed to be remedied by filing amendment.

It further follows that the reasoning of the Id. Court below in allowing the impugned amendment on the ground that *“some subsequent facts and circumstances have developed which needs to be decided in this very suit”*, is incorrect.

Moreover, one of the ostensible reasons cited by the plaintiff for filing the present proceeding (as already noticed hereinabove), is that no disturbance be caused to the children. However, by way of amendment, the plaintiff is simultaneously seeking to include prayer for the demolition of the stadium already constructed. In my view, this is a contradiction in terms as demolition of the stadium would cause not just great disturbance to the students, but also tremendous financial loss. Accordingly, the purported reasons cited by the plaintiff for amendment of the plaint do not bear scrutiny.

Further, admittedly, the Gram Panchayat is owner in possession of total land measuring 198 kanal 8 marla. Out of this land the School is existing in land measuring 38 kanal 8 marla comprised in Khasra No.165 min (32-0) and 166 (6-8), and stadium has been constructed in 27 kanal 9 marla comprised in Khasra No. 165, and in 4 kanal 19 marla comprised in Khasra No.53//20/21 and 68/1. The remaining land is adjacent to the School. As such, there is apparently enough vacant land of the petitioner-Gram Panchayat for expansion of the School. Moreover, the boundary wall of the School is stated to have been very old and had fallen

down on its own and had therefore been re-constructed by the petitioner keeping in view the public interest and safety of school children. As such, the concerns/reasons of the respondent/plaintiff for filing present amendment, appear to be unjustified.

As regards the petitioner's argument regarding Section 91CPC, it goes unrefuted that the plaintiff himself had suffered statement on 21.12.2017 to the effect that he wanted to implead plaintiff nos. 2, 3 and 4 as proforma defendants and thereafter, Amended title is also stated to have been filed by the plaintiff on 17.1.2018. Therefore, application for amendment by the plaintiff also deserves to be rejected in view of the law laid down by the Hon'ble Supreme Court in case of **Revajeetu (supra)**, wherein Their Lordships have laid down the following guidelines:

"D. CPC, Sections 35A, 35B and 35 - Civil Procedure Code, Order 6, Rule 17 - Amendment of pleadings sought by a party - The party should be imposed cost - The purpose of imposing cost is to :-

(a) Discourage mala fide amendments designed to delay the legal proceedings;

(b) Compensate the other party for the delay and the inconvenience caused;

(c) Compensate the other party for avoidable expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and

(d) To send a clear message that the parties have to be careful while drafting the original pleadings.

E. Civil Procedure Code, Order 6, Rule 17 - Amendment of pleadings sought by a party - Following principles ought to be taken into consideration while allowing or rejecting the application for amendment :-

(1) Whether the amendment sought imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
- (6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.
- (7) These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17 - These are only illustrative and not exhaustive.
- (8) The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.
- (9) While deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

Accordingly, in view of the above discussion, I allow the present Revision Petition and set aside the impugned order dated 27.09.2018.

However, nothing stated above shall be construed as a final expression or opinion on the merits of the pending suit and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present revision petition.

12.01.2023
Sunena

(Nidhi Gupta)
Judge

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