

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

129

2023:PHHC:154043

CR-2390-2019

Date of decision: 04.12.2023

SANJEEV

..Petitioner

Versus

**GURUKUL INDRAPRASTHA
MANAGING COMMITTEE**

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sanjay Verma, Advocate
and Mr. Parvesh, Advocate
for the petitioner.

Mr. Vishal Nehra, Advocate
for respondent.

ANIL KSHETARPAL, J(Oral)

1. On 08.12.2014, the plaintiff (the respondent herein Gurukul Indraprastha Managing Committee) filed a suit for grant of mandatory injunction and mesne profits alleging that the petitioner (herein) has encroached upon the plaintiff's land measuring approximately 550 square yard area comprised Rectangle No.15, Killa No.14 Min and 17 and has illegally got a mobile tower installed.

2. On completion of pleadings, the Court culled out the issues for adjudication on 18.07.2016. Thereafter, the plaintiff concluded its evidence. An application for permission to lead additional evidence filed by the plaintiff, was dismissed by the trial Court, however, the High Court permitted the plaintiff to lead additional evidence. At the instance of the plaintiff, the land was demarcated by a retired revenue official on 02.11.2018. It was reported that the petitioner (defendant in the trial Court) has encroached upon 1867 square yard area, which actually belongs to the

plaintiff. An application filed by the plaintiff with a prayer to permit

amendment of the plaint in order to seek relief of delivery of possession qua 1867 square yard was dismissed by the trial Court on 05.03.2019. Forced by the circumstances, the plaintiff made an oral request to the Court for permitting it to withdraw the suit with permission to file a fresh one, which has been granted. The petitioner (defendant) has challenged its correctness.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. The learned counsel representing the petitioner (defendant) submits that the Court erred in permitting the plaintiff to withdraw the suit with permission to file fresh one as the plaint did not suffer from any formal defect. He submits that the Court should not have permitted the plaintiff to withdraw the suit.

5. On the other hand, the learned counsel representing the respondent (plaintiff) submits that the prayer for withdrawal of the suit was made under the compelling circumstances because the application filed for permission to amend the plaint was dismissed.

6. This court has considered the submissions of the learned counsel representing the parties.

7. The learned counsel representing the petitioner has been called upon to justify the correctness of order dated 05.03.2019. He submits that the plaintiff has not filed any revision petition and the aforesaid order has now become final.

8. This Court in the present case is exercising its jurisdiction under Article 227 of the Constitution of India, that confers the superintending powers to the High Court.

In fact, there was no requirement for the plaintiff to file an application for permission to amend the plaint particularly when it was asserted in the plaint that the petitioner herein has encroached upon approximately 550 square yards plot. The Court was required to finally determine the extent of encroachment, if any, and pass an appropriate decree. In any case, once an application was moved by the plaintiff, the Court was required to adopt a pragmatic approach in order to advance the cause of justice. This Court cannot overlook the aforesaid incorrect order only on the ground that the plaintiff has not filed a revision petition. Once this fact has come to the notice of the Court, it cannot turn a blind eye to the aforesaid wrong order.

9. Moreover, the parties have been litigating for the last 10 years. Every Court shall endeavor to decide the case on merits rather than only technicalities. The proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, does not debar the Court from allowing the amendment of the pleadings if the party makes out a proper case for the application of said exception.

10. In this case, the fresh demarcation was carried out on 02.11.2018, whereas, the application was filed on 20.02.2019. Thus, the trial Court erred in dismissing the application. Reliance in this regard can be placed upon the judgment passed in **Life Insurance Corporation of India Vs. Sanjeev builders Private Limited and another, 2022 SCC Online SC 1128.**

11. Keeping in view the aforesaid facts, the revision petition is disposed of while setting aside the orders passed on 05.03.2019, and

11.03.2019. The suit filed by the plaintiff shall stand restored to its original number. The plaintiff’s application for permission to amend the plaint shall stand allowed. The defendant shall be granted an opportunity to file the written statement and thereafter, the trial Court shall proceed with the matter in accordance with law.

12. All the pending miscellaneous applications, if any, are also disposed of.

December 04th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

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