

CR-2531-2019 (O&M)

223 (3rd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2531-2019 (O&M)

Date of decision: May 31, 2023

Yushaf

....Petitioner

versus

Rukamdin and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Abdul Shehbaz Thind, Advocate for petitioner.

Mr. Aayush Gupta, Advocate for respondents No.2 to 4.

ARUN MONGA, J. (ORAL)**CM-8671-CII-2019**

For the reasons stated in application, same is allowed subject to all just exceptions.

Main case (O&M)

Petition herein *inter alia* is for setting aside impugned order dated 25.01.2019 (Annexure P-5) passed by learned Civil Judge (Junior Division), Ludhiana, whereby application dated 08.10.2018 (Annexure P-1) filed by petitioner-plaintiff for amendment of plaint, was dismissed.

2. Averments are that petitioner-plaintiff filed suit for permanent injunction restraining defendant/respondents, their employees, agents, servants, associates etc. from interfering or causing to interfere in the peaceful possession of plaintiff and from dispossessing or causing to dispossess the plaintiff from the property known as “*Gujjaran da dera*” in village Poheer, Tehsil and District Ludhiana and from causing any interference in the use of property by plaintiff and from doing any act detrimental to interest of plaintiff and from demolishing or

CR-2531-2019 (O&M)

causing any damage to the existing position and construction in existence in the above said property in any manner whatsoever.

2.1. During pendency of said suit, defendant-Bittu Ram in connivance with his brother Varinder Kumar and close friend Manmohan Singh got registered a false criminal case under Sections 323, 341, 506, 148 read with Section 149 of Indian Penal Code, 1860 (for short 'IPC') against plaintiff and his wife Roshan Bibi, sons Bashir Ahmed, Shekhawat Ali and Shabir only to dispossess plaintiff from suit property.

2.2. Vide judgment dated 13.08.2018 (Annexure P-3), learned Judicial Magistrate First Class, Ludhiana acquitted plaintiff and others from the said criminal case. A criminal case under Sections 452, 323, 316, 506 read with Section 34 IPC was registered against Bittu Ram and Varinder Singla, but the said criminal case was wrongly cancelled and daughter-in-law of plaintiff, namely, Shailo Bibi being complainant was summoned by learned *Illaq*a Judicial Magistrate First Class, Ludhiana. She got recorded her statement that she was not in favour of said cancellation report and filed protest petition. Learned Judicial Magistrate Ist Class, Ludhiana vide order dated 11.05.2017 (Annexure P-4) summoned aforesaid Bittu Ram and Varinder Singla. Petitioner/plaintiff seeks to bring these facts on record by way of proposed amendment in the plaint. Petitioner filed an application for amendment of plaint, in this regard.

2.3. Vide impugned order dated 25.01.2019 (Annexure P-5), learned trial Court dismissed the aforesaid application.

3. Learned counsel for petitioner would contend that amendment sought by plaintiff is necessary for the purpose of determining real controversy between the parties. Proposed amendment is necessary for proper and effective determination of already framed issues. He contends that by allowing said amendment, no prejudice will be caused to the opposite party.

CR-2531-2019 (O&M)

4. I have heard learned counsel for the parties and perused the record.
5. Impugned order dated 25.01.2019 (Annexure P-5) is premised *inter alia* on the following reasoning:

“5. Now by way of application U/o 6 rule 17CPC, plaintiff wants to bring on record that defendant Bittu Ram in connivance with his brother Varinder Kumar and close friend Manmohan Singh got false case registered against plaintiff, his wife and sons, under Section 323, 341, 506, 148, 149 IPC. In said case, titled as "State Vs Roshan Bibi & Others" plaintiff and others have been acquitted by the court of Sh. Sudhir Kumar, Ld. Judicial Magistrate First Class, Ludhiana vide judgment dated 13.08.2018. That defendants Varinder Singla have been summoned to face trial under Section 452, 323, 316, 506, 34 IPC in complaint title as "Shailo Bibi Vs Varinder Singla & anothers" bearing registration 63555 of 2014. As far as, the pendency of criminal case against plaintiff is concerned, the said FIR pertains to year 2011 and plaintiff was very much having knowledge regarding the pendency of the same but he intentionally did not disclose the said facts at the time of filing of present suit. Further as far as, the question of summoning in criminal case is concerned the same was also in the knowledge of plaintiff but plaintiff did not mention the said fact in the plaint. The facts that plaintiff wants to bring on record by way of present application were in the knowledge of plaintiff. No reason has been assigned by plaintiff as to why the said facts were not earlier disclosed by plaintiff. Issues in present case have already being framed on 19.07.2017, trial of present case has already begun, as such, no ground is made out for allowing the application. It is pertinent to mention over here that issues in present case were framed on 19.07.2019. Plaintiff after availing 3 effective opportunities for leading evidence moved an application for consolidation of the case. The said application was disposed off vide order dated 08.03.2018. Thereafter, the case was adjourned to 05.04.2018 for plaintiff evidence. Plaintiff instead of leading evidence moved an application under Section 151 CPC for awaiting order from Hon'ble Punjab and Haryana High court. Thereafter, during the pendency of the said application, plaintiff moved another application on 02.07.2018 for leading evidence in one case as the evidence in other case. The said application moved by plaintiff was also disposed off vide order dated 12.09.2018. The case was fixed for plaintiff evidence but instead of leading evidence, plaintiff moved present application under Section 6 Rule 17 for bringing on record the factum of criminal proceedings pending between the parties and seeking amendment in the plaint. Plaintiff in present case from 19.07.2017 has not examined even a single witness but is moving one application after another. Accordingly, one last opportunity is granted to plaintiff to conclude his evidence.”

6. From the perusal of the above, I find no grounds for interference with the aforesaid reasoning. It transpires that factum of registration of FIR and

CR-2531-2019 (O&M)

subsequent acquittal of plaintiff in the criminal proceedings is more of an elaboration of narrative already contained in the plaint. In the premise, I see no grounds as to why at the relevant time, the same cannot be stated in the examination-in-chief, subject of-course to the right of defendants to cross-examine the plaintiff.

- 7. With these observations, revision petition is disposed of.
- 8. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 31, 2023
mahavir

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