

In the High Court of Punjab and Haryana, at Chandigarh**Civil Revision No. 2921 of 2022 (O&M)****Date of Decision: 19.12.2023**

Preet Harjinder Singh

... Petitioner(s)

Versus

Lakhbir Singh and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sharad Mehra, Advocate
for the petitioner(s).

Anil Kshetarpal, J.

1. Despite service of notice, the respondent No.1 has not entered appearance. This revision petition has been filed to challenge the correctness of the interlocutory order passed by the trial Court on 11.05.2022, while dismissing the plaintiff's application for permission to amend the plaint in order to seek relief of possession of the property. The trial Court has dismissed the application on the ground that after the commencement of the trial, it will not be appropriate to allow the amendment. The Court has also found that at the time of filing of the suit, the defendant was already in possession but he did not seek the relief of possession of the aforementioned land.

2. The learned counsel representing the petitioner contends that the plaintiff has prayed for permission to amend the plaint in order to amend the prayer clause to seek proper relief. The learned counsel submits that the plaintiff has already sought a decree for mandatory injunction directing the

respondent No.1 to demolish or remove the wall which, in substance, means that the petitioner prays for the relief of possession.

3. This Court has considered the submissions of the learned counsel representing the petitioner. In the month of June 2020, while filing the suit, the plaintiff prayed for the following relief:-

“It is, therefore, prayed that a decree of permanent injunction to the effect that the defendant no.1 be restrained from interfering into the peaceful and lawful possession of the plaintiff out of khasra number 20//21/2(6-4) and further be restrained from encroaching excess area of 07 feet from the western side towards northern side from point C to D which is beyond 02 kanals 10 marlas (50 marlas) (62 x 220 already sold by plaintiff to defendant no.1) as per the site plan dated 09.06.2020 thereby constructing wall out of land bearing khewat number 1/1, khatouni no.2, comprised in khasra number 20//21/2(6-4), as recorded in the jamabandi for the year 2016-17, situated in the revenue estate of village Behla, Tehsil and District Tarn Taran, forcibly and illegally otherwise than in due course of law; and a decree for mandatory injunction directing the defendant no.1 to demolish/remove the wall which is 7 feet in breadth towards western side and 85 feet in length towards northern side from point A to B as shown red in the site plan dated 09.06.2020 as the same has been constructed illegally by encroaching excess area of 07 feet of the land of the plaintiff i.e. 69 feet instead of 62 feet out of

khasra number 20//21/2(6-4) as detailed above, which is bounded as under: North - Agricultural land of plaintiff, South - Daburji Road, East - Agricultural land of plaintiff, West - Agricultural land of plaintiff as fully detailed in the site plan dated 09.06.2020 and photographs of the existing position prevailing at the spot, may kindly be ordered to be passed in favour of the plaintiff against the defendants with costs in the interest of justice, equity and fairplay. Any other relief to which the learned court may deem fit be also granted to the plaintiff under the law and equity. ”

4. It is evident that the prayer clause is divided in two parts. The second part of the prayer clause is with regard to passing a decree for mandatory injunction directing the defendant No.1 to demolish/remove the wall which is 7 feet in breadth towards the Western side and 85 feet in length towards the Northern side from point A to B. From the reading of the plaint, it is evident that the plaintiff has alleged that the aforesaid area has been encroached upon by the defendant No.1. The plaintiff has already sought relief of mandatory injunction directing the defendant No.1 to remove the encroachment. By way of amendment, the plaintiff only wants to make a proper prayer in order to avoid any technical objection being raised in future. While dismissing the application, the trial Court has taken a narrow view which does not advance the cause of justice. There are various types of amendments in the pleadings. Certain amendments are only formal in nature that are sought in order to correct the inadvertent mistakes or correct the prayer clause. Such amendments should be allowed in order to decide the

case on merits. Reliance in this regard is placed upon the judgment in *Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another* 2022 AIR (Supreme Court) 4256.

5. In view of the aforesaid facts, the present revision petition is allowed. The impugned order dated 11.05.2022 is set aside. The plaintiff shall be permitted to amend the prayer clause. Thereafter, the trial Court shall proceed with the matter in accordance with law.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

December 19, 2023

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No