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

CR-2091-2021 (O&M)

Date of Decision: 08.05.2023

Gurdev Singh

...Petitioner

Versus

Partap Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. K.S. Sidhu, Advocate
for the petitioner.

Mr. M.S. Yadav, Advocate
for Mr. Sunny K. Singla, Advocate
for the respondent.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 23.04.2021 (Annexure P-10) passed by Ld. Additional Civil Judge (Sr. Division), Jaitu, whereby the application (Annexure P-8) under Order 6 Rule 17 CPC for amendment of plaint filed by petitioner/plaintiff, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff has filed a suit of permanent injunction for restraining the defendant from encroaching upon the site in question. However, during pendency of suit, petitioner filed an application under Order 6 Rule 17 CPC for amendment of plaint to the following effect:-

*“a) To add the following in the head note of the plaint as well as in the prayer clause after the words “**without in due course of law**”.*

“And for mandatory injunction, directing the defendant to remove the portion shown in Green colour having three sides wall attached to the house of the defendant.”

b) To add para No.5(A) as under:

“5A. That the defendant during the pendency of present suit raised the wall ‘XZ’ as shown in the Green Colour and also wall ‘XB’ & ‘ZY’ adjoining to his house with an ulterior motive for encroaching of the portion of the street which is 3 karams in width and part of a khasra No.4019/2018/1-8, situated within the revenue estate of village Rori Kapura, Tehsil Jaitu, District Faridkot.”

2.2. Upon notice, defendant filed a reply opposing the application, which has been dismissed vide impugned order.

3. Learned counsel for petitioner would argue that Ld. Court fell in grave error to hold that petitioner was in prior knowledge of the fact proposed to be pleaded vide para 5A, *ibid*. Whereas, it was during pendency of suit, that the defendant constructed the wall over the street in question by 3-4 feet by illegally encroaching the passage existing since consolidation proceedings by the department. Further, the passage in question is also duly recorded in Jamabandi falling in Khasra No.4019/2108/1-8 (0-7-8.20) as Gair Mumkin pahi/passage.

4. Learned counsel appearing for respondent would *per contra* argue that plaintiff cannot be allowed to change the nature of suit by way of amendment.

5. Heard.

6. Having seen the nature of amendment to be carried out, I am of the view that the same would not change the nature of suit and merely an incidental fact is sought to be pleaded. As regards the amendment in relief, no doubt Court on its own is also empowered to mould the relief in a suit depending upon subsequent development, but even if amendment is allowed *qua* the same it would not prejudice the defendant.

7. In the premise, the proposed amendment is allowed subject to payment of costs of Rs.5,000/- to respondent/defendant, as no prejudice

would be caused to the respondent. Ld. Trial Court to proceed further in accordance with law.

8. Revision stands allowed in above terms.
9. Pending civil miscellaneous application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 08, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No