



CR-5385-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-5385-2024
Date of decision : 18.09.2024

Ajmer Singh and another ... Petitioners

Versus

Bhagat Singh through LRs and another ... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Randhir Singh Manhas, Advocate for the petitioners.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the order dated 03.07.2024 (Annexure P-7) vide which the application under Order 6 Rule 17 CPC filed by the plaintiff has been allowed.
2. Brief facts of the present case are that the respondents had filed a suit for permanent injunction restraining the defendants-petitioners from raising any sort of construction upon the valuable land abutting highway road i.e. NH-21 Chandigarh-Kharar Highway, which is a part of the suit land. In the said plaint, it was averred that the defendants wanted to encroach upon valuable portion of the suit land abutting the road. Subsequently, an application dated 19.04.2024 (Annexure P-4) was filed by the plaintiffs under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of the plaint and in the said application, it was averred that during the pendency of the case, the defendants had constructed five shops and four rooms in the suit property and thus, additional prayers in the head

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note as well as in the prayer clause for possession after removal of the said encroachment were sought to be made in addition to adding paragraph 3-A in the body of the suit vide which the plaintiffs wanted to aver that during the pendency of the suit, the defendants had carried out the said construction. Reply to the said application was filed and in the said reply it was stated by the petitioners that nowhere in the revenue record were the answering respondents mentioned as owners in possession of the suit property. The trial Court vide order dated 03.07.2024 had allowed the said application under Order 6 Rule 17 CPC and had observed that the said amendment would help the Court in properly and effectively adjudicating the controversy in the suit.

3. Learned counsel for the petitioner has submitted that in the present case, the suit for permanent injunction has been converted into a suit for possession and false averments have been made that the present petitioners had raised construction on the suit property and has thus prayed that the application for amendment deserves to be dismissed and the impugned order deserves to be set aside.

4. This Court has heard the learned counsel for the petitioners and has perused the paper book.

5. It is a matter of settled law that, at the time of deciding the application for amendment under Order 6 Rule 17 CPC, the Court is not required to adjudicate upon the plea proposed to be incorporated / added and is primarily required to consider as to whether the amendments are necessary for determining the real question in controversy. Reference in this



regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of ***Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.*** reported as ***2006(2) RCR (Civil) 577***. The relevant portion of the said judgment is reproduced hereinbelow:-

13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and



Another, (2002) 7 SCC 559.

6. This Court is of the opinion that the amendment sought in the present case is necessary for the proper and final adjudication of the case as also to avoid multiplicity of litigation. It is not in dispute that the respondents-plaintiffs had filed a suit for permanent injunction restraining the defendants from raising any sort of construction upon valuable portion of the suit land abutting the highway road i.e. NH-21 Chandigarh Kharar Highway and it was pleaded by the plaintiffs that the defendants wanted to encroach upon the valuable portion of the suit land abutting the road. It is the case of the plaintiffs in the application dated 19.04.2024 that during the pendency of the case, the defendants have constructed five shops and four rooms in the suit property. Since as per the case of the plaintiffs, the said event has taken place during the pendency of the suit, thus, it is apparent that the plaintiffs have every right to carry out the said amendment and also to add a prayer for possession on account of the said subsequent event of encroaching and raising the construction. In case the pleas raised by the plaintiffs in the suit are proved to be correct, then the plaintiffs should not be non-suited only on the ground of absence of the prayer now sought to be made by the plaintiffs. Merely by allowing the amendment, relief has not been granted to the plaintiffs. The pleas raised by the plaintiffs in the plaint as well as their plea in the amended plaint to the effect that during the pendency of the suit, the defendants have constructed five shops and four rooms in the suit property, would all be considered during the trial after considering the evidence led by both the parties and the arguments raised by



both the parties and thus, mere acceptance of the amendment does not mean that the plaintiffs have been held to be entitled to the said relief. The said aspect would be considered finally during the course of trial. The argument raised by learned counsel for the petitioners to the effect that the plea is false is not required to be adjudicated at the stage of allowing the amendment or at the stage of considering the revision petition assailing the order vide which the amendment has been allowed. The petitioners would have the liberty to file an amended written statement and to take up all the pleas which are available to them, which would be finally adjudicated during the course of trial. Even the argument of learned counsel for the petitioners to the effect that the additional prayer sought to be raised is contrary to the prayer made in the plaint, is also misconceived as it is the case of the plaintiffs that during the pendency of the suit, construction and encroachment has been done and thus, in view of the same, the prayer of which cause of action has arisen on account of the said subsequent events has been sought to be incorporated. At any rate, all the said aspects would be considered during the course of trial and the amendment which has been allowed is necessary for the proper and final adjudication of the case and to avoid multiplicity of litigation.

7. Keeping in view the above said facts and circumstances, the present petition being meritless deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 18, 2024.
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No