



S. No.115

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7566 of 2024 (O&M)
Date of Decision:25.03.2026

Harpal Singh

.....Petitioner

Vs.

Vishavnath Singh @ Kaka and anotherRespondents

CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present:- Mr. Parminder Singh Kanwar, Advocate with
Mr. Padamkant Dwivedi, Advocate for the petitioner.

Mr. Prince Singh, Advocate with Ms. Navya Jindal,
Advocate for respondent No.2.

Yashvir Singh Rathor, J. (Oral)

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 18.10.2024 passed by Civil Judge, Junior Division, Ambala vide which application for amendment of plaint filed by the petitioner/ plaintiff has been dismissed.

2. I have heard learned counsel for the parties and have perused the material placed on record.

3. As per version of plaintiff, house of defendant No.1 is situated on the western side of the house of plaintiff and in front of their houses, street is situated which is under the administrative control of defendant No.2/ Municipal Council, Ambala Cantt. Defendant No.2 is owner of the same and plaintiff, defendant No.1 and other villagers use the said street for their ingress and outgress. In the year 2021, defendant No.2 installed cement blocks in the street passing in front of the house of plaintiff and defendant No.1. In the last week, defendant No.1 started



raising construction of his house and tried to raise construction on the street shown in red colour marked with letters 'ABCD' by removing the cemented blocks installed by defendant No.2 but he could not succeed due to timely intervention of the plaintiff and other villagers. However, defendant No.1 threatened to raise construction in the street shown in red colour marked with letters 'ABCD', which necessitated the present suit. By way of present suit, plaintiff sought a decree for permanent injunction restraining defendant No.1 from raising construction on the street/ land shown in red colour, marked with letters 'ABCD' in the site plan attached with the plaint.

4. Defendant No.1 in his written statement has taken a plea that he has never tried to raise construction on the street. Rather, the construction has been completed which was raised on the old plinth of the toilet and infact, he had left 6-8 inches of land towards the street which is visible in the photographs and plaintiff has concocted a false story. Even in the record of Municipal Council, the disputed property is owned and possessed by defendant No.1 since the time of his forefathers. Earlier, there existed a toilet and separate tank under the ground of the answering defendant & in order to renovate his house, he has demolished the old construction of his house and toilet and started raising new one. Plaintiff is a mischievous person and started raising objections against the construction of toilet at the same place where it earlier existed.

5. During pendency of the suit, plaintiff moved an application under Order 6 Rule 17 CPC seeking amendment of plaint and to convert the suit for permanent injunction into a suit for mandatory injunction alleging that defendant No.1 has constructed room in the street/ land during pendency of the suit and a



decree for mandatory injunction has been sought for directing defendants to demolish the construction on the street/ land shown in red colour marked with letters `ABCD` in the site plan which has been dismissed by the trial Court vide impugned order dated 18.10.2024 (Annexure P.6).

6. In this manner, plaintiff in his original plaint has taken a plea that defendant No.1 is threatening to raise construction over portion `ABCD` as shown in red colour in the street. Now by way of application in hand, he seeks to take a plea that defendant No.1 has raised construction in the street which should be demolished. The trial Court has rejected the application with the observations that in case application is allowed, it will change the entire nature of the present suit. It has also been observed that the plaintiff should have initially filed a suit for mandatory injunction. However, the reasoning given by the trial Court is erroneous and is not sustainable. In case the unauthorised construction has been raised during pendency of the suit, plaintiff certainly is entitled to the amend the plaint and to seek a decree for mandatory injunction for demolition of the unauthorised construction. The suit for mandatory injunction could not have been instituted when he instituted the suit for permanent injunction for restraining defendant No.1 from raising construction as according to his version, no such construction existed at that time. In these circumstances, the amendment sought to be made has got necessitated as a result of subsequent event during pendency of the suit and the application in hand thus could not have been rejected. The learned trial Court has thus committed material illegality and manifest error while rejecting the application. The case law cited by learned counsel for the respondent



No.2 i.e. in 2024(4) RCR (Civil) 115 – **Basavaraj Vs. Indira and others** is not applicable to the facts of this case.

7. Resultantly, the impugned order dated 18.10.2024 (Annexure P.6) is set aside and the revision petition in hand is allowed.

(Yashvir Singh Rathor)
Judge

March 25, 2026
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No