



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
254 **CR-6235-2018 (O&M)**
Date of decision: 10.03.2025

Abdul Gani

...Petitioner(s)

Vs.

Mujtaba Yazdani & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akhil Saini, Advocate
Mr. Pardeep Goyal, Advocate
for the petitioner.

NIDHI GUPTA, J.

Present petition under Article 227 of the Constitution of India has been filed by plaintiff No.1 for setting aside the order dated 17.05.2018 (Annexure P9) whereby the application filed by the petitioner/plaintiff No.1 and plaintiffs No.2 to 4/pro-forma respondents herein, under Order 6 Rule 17 CPC for amendment of the plaint, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that the application of the petitioner/plaintiffs for amendment of the plaint has been wrongly dismissed as the learned trial Court has ignored the fact that illegal and unauthorised construction was raised by the defendant on the suit land during the pendency of the suit. Thus, the construction was subsequent to the filing of the suit. The petitioner had even placed on record photographs to show the illegal construction of the defendants. However, the learned trial Court did not record any evidence in this respect



nor appointed any Local Commissioner to ascertain this fact; thus, causing grave miscarriage of justice to the petitioner. Even the observation of the learned trial Court to the effect that the application was moved at the stage of plaintiff evidence is uncalled for as, as per the settled law application under Order 6 Rule 17 CPC can be moved at any stage. No prejudice would have been caused to the defendant if the amendment had been allowed. The amendment is essential for proper adjudication of the matter. It is accordingly prayed that the impugned order be set aside.

3. No other argument is made on behalf of the petitioner.
4. I have heard learned counsel for the petitioner and perused the case file in great detail.
5. Brief facts of the case are that the petitioner and pro-forma respondents No.2 to 4/plaintiffs had filed a suit dated 02.06.2015 (Annexure P1) for permanent prohibitory injunction against defendant/respondent No.1 herein. Written statement dated 06.06.2015 (Annexure P2) was filed by the defendant. Replication dated 27.07.2015 (Annexure P3) was filed by the plaintiffs. Thereafter the plaintiffs had filed the present application dated 11.09.2017 (Annexure P4) under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint. By way of proposed amendment, the plaintiffs wanted to amend head note by adding head note "B"; and further amendment by adding Para "9A"; and had further sought amendment of Para 14 by adding relief "B" and prayer clause to the effect that during the pendency of the suit, the defendant had raised



illegal and unauthorised construction. Therefore, decree of mandatory injunction directing the defendant to remove illegal and unauthorised construction be issued. The defendant had filed reply to the said application on 30.11.2017 (Annexure P8).

6. It is the contention of the petitioner that the learned trial court is in error in dismissing the application of the plaintiffs as, the amendment pertains to subsequent events. It has been stated that the illegal construction has been raised by the defendant after filing of the suit. However, the record reveals the said submission of the petitioner is factually incorrect. The construction in question was existing at the time of filing of Civil Suit on 02.06.2015. This is evident from the fact that in Para 1 of the written statement dated 06.06.2015 (Annexure P2) filed by the defendant, the defendant has categorically stated that pursuant to resolution dated 15.06.1995, construction was raised over the suit land for the school building and that the plaintiffs have got no right title or concern with the land measuring 5 bighas. In Para 1 of the replication dated 27.07.2015 (Annexure P3), the plaintiffs have admitted the said construction stating therein “...that the alleged construction has been made by the defendant in the suit property in connivance with his associates and at the instance of...”. From the above facts, it is crystal clear that the said construction existed prior to filing of the present suit on 02.06.2015. From the above, it is evident that the petitioner had full knowledge of the construction. Thus, the petitioner cannot be permitted to amend the plaint



merely to fill the Lacunae in the suit. It is also relevant that the present application seeking amendment of the plaint has been filed on 11.09.2017 i.e. more than two years after filing of the suit, and at the stage when the case was fixed for plaintiff evidence. As such, no ground is made out to interfere in the impugned order.

7. Learned counsel for the petitioner is unable to dispute or deny the aforesaid facts and findings.

8. In view of the above, present petition is **dismissed**.

9. Pending application(s) if any also stand(s) disposed of.

10.03.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No