

(2010) 04 SHI CK 0157
In the High Court Of Himachal Pradesh

Dalip Singh and Others

APPELLANT

Vs

Sukhvinder Singh and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2010) 04 SHI CK 0157

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—This appeal has been preferred by the plaintiffs against the judgment and decree of the learned District Judge reversing the judgment and decree passed by the learned Sub Judge Ist Class, decreeing the suit of the plaintiffs granting a decree for injunction restraining defendants No. 1 and 2, namely; Smt. Sansar Devi and Shri Sukhvinder Singh, from interfering in any manner in the joint possession of the plaintiffs on the land comprising Khasra No. 324, measuring 19 Bighas 3 Biswas, situated in Mauza Patti Rehana (Now Vikas Nagar).

2. The appeal was admitted on substantial questions of law Nos. 1 to 3 as filed alongwith the appeal. However, for the purposes of present appeal, I am only considering substantial question No. 1 which relates to the legality and propriety of the order passed by the learned lower appellate Court rejecting the application filed by the appellants herein for amendment of their pleadings.

3. It is undisputed before me that during the pendency of the appeal, the plaintiffs moved an application under Order 6 Rule 17 of the CPC for amendment of the plaint. The plaintiffs sought to incorporate as a fact that during the pendency of the appeal, the defendants had made encroachments on a particular portion of the land which required to be removed. The learned appellate Court has dismissed the application holding that there is no need for allowing the

amendment because it is well settled that if in a suit for permanent prohibitory injunction the defendants are shown to have accomplished the act, relief of mandatory injunction follows automatically.

4. The law on question of amendment is well settled. All amendments which are necessary for the purpose of determining the true controversy between the parties and which are not frivolous are required to be allowed. It is not at the stage of allowing or dismissing the application that the amendment, truth/ veracity of the pleadings has to be considered. From the judgment of the learned Court, I find that no such exercise has been undertaken and the application has been rejected outright with the observations that the amendments are not necessary. The reasoning adopted by the learned Court below cannot be accepted. An opportunity had to be given to the plaintiffs, appellants herein, to establish their case before the Court below on the basis of the amended pleadings before making any pronouncement on the facts alleged therein.

5. In view of this finding, this appeal is allowed. The judgment and decree of the learned District Judge is set aside. The case is remanded to the Court of learned District Judge, Shimla, who shall grant the amendment sought by the plaintiffs-appellants and shall thereafter proceed to determine the case in accordance with law. Needless to say that on the amendment allowed, the respondents herein shall be given an opportunity to file their pleadings. Both parties will also be given an opportunity to lead evidence on the amended pleadings. The evidence shall be recorded by the learned District Judge who shall thereafter proceed with the case in accordance with law. Appeal is accordingly allowed. The judgment and decree of the appellate Court is set aside who shall proceed afresh to hear the appeal in accordance with law. Parties to appear before the learned District Judge, Shimla on 28th May, 2010. Let the records be sent back immediately. No order as to costs.