
(1999) 09 P&H CK 0180
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5988 of 1998

Kehri	Vs	APPELLANT
Janardhan		RESPONDENT

Date of Decision : 23-09-1999

Acts Referred:

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

Citation : (2000) 2 CivCC 232 : (2000) 1 RCR(Civil) 443

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : Ramesh Hooda, for the Appellant; S.K. Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Challenge in this revision is to the order passed by the learned Civil Judge (Senior Division), Sonapat dated 5.11.1998, vide which the application filed by the applicant-defendant under Order 6 Rule 17 of the CPC was dismissed.

2. The contention raised on behalf of the petitioner before this Court is that the learned trial Court has fallen in error of jurisdiction in declining the amendment, because the amendment prayed for was self-explanatory" in its nature and in no way prejudiced the rights of the other side. In order to appreciate the merit of this contention, reference to the basic facts would be necessary.

3. The plaintiff filed a suit for injunction stating that there is a public street being street No. 1045 and was being used as a Public street for a considerable time. The defendant was trying to encroach upon and close the Public street. Thus, intending to block the passage, which is being used by the residents as well as the passage for cattle buggy etc.

4. The suit was contested by the defendant. The parties led their evidence in support of their respective case and the case was fixed at the argument stage when the present application for amendment was filed. According to the

applicant amendment" was necessary for proper adjudication of the dispute in issue.

5. Earlier in the written statement, the stand taken by the defendant was that he has not encroached upon any public street. though at the time of partition of abadi. a street was shown in the record. By way of amendment, now he wanted to clarify the factual position that there was no public street. This application for amendment was contested by the defendant and the same was dismissed by the learned trial Court, giving rise to this revision petition.

6. There is no dispute to the act that on the basis of the averments made in paragraphs 2 and 3 of the written statement earlier filed by the defendant, the parties were put to trial and in the suit the defendant had specifically admitted that he had not encroached on any portion of the street. The effect of the pleadings filed by the parties, thus raised no controversy in regard to existence of the street, Secondly no issue was framed in that regard. The parties adduced evidence on the basis of these pleadings.

7. Learned Counsel for the petitioner, while relying upon cases Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, and Khushi v. Mohd. Ishak and Others, 1991 PLR 743. contended that even an admission can be withdrawn and the law of amendment is intended to facilitate and not to obstruct substantial justice, as such, the amendment prayed for by the plaintiff should have been allowed.

8. On the other hand, Learned Counsel for the respondent, contended that the impugned order does not suffer from an error of jurisdiction or otherwise, and therefore, calls for no interference. In support of his contention, he relied upon the cases Heeralal Vs. Kalyan Mal and Others, and Jagga Singh v. Harpal Singh, 1995 (1) PLR 763.

9. It is a settled rule of law that while the Court is considering the application of the present kind for amendment of pleadings, it must consider, amongst other factors, whether the amendment prayed for is a bona fide; at what stage of the proceedings it has been moved and whether the withdrawal of the admission would displace the defendant prejudicially and as a consequence thereof the defendant would be called upon to meet a total new case. All these essential ingredients have to be answered against the present applicant/The most important factor is that the applicant had not only taken a stand with regard to existence of the street in his pleadings but also, while appearing in the witness box as DW1, has clearly admitted in no uncertain terms that the street was in existence. He stated "...jhagre wali gali ke sath mera plot hai...." The plaintiff has also taken similar stand and had prayed that the defendant should be restrained from encroaching upon the street or blocking the same.

10. It is abundantly clear from the record that the applicant-defendant is not merely explaining an admission on record or withdrawing such explanation but is intended to completely displace the plaintiff. The applicant wishes to raise a

contradictory plea destructive of the earlier admission and take the plaintiff by surprises, thus, causing serious prejudice to the case of the plaintiff. The plaintiff would be called upon the met absolutely a new case, after the parties have led their evidence on the basis of their earlier pleadings. The case of Heera Lal (supra) covers the present case on facts and law.

11. For the reasons aforestated, I am of the considered view that the learned trial Court has rejected the application for amendment in consonance with the settled principle of law. as such, the impugned order docs not suffer from an error of jurisdiction or otherwise calling for interference by this Court in exercise of its revisional jurisdiction.

12. Consequently, the revision petition is dismissed. However, there shall be no order as to costs.