
(2007) 05 SHI CK 0026
In the High Court Of Himachal Pradesh

Municipal Corporation

APPELLANT

Vs

Ram Lal Sharma

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

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

Citation : (2008) 3 CivCC 515 : (2007) 2 ShimLC 425

Hon'ble Judges : Dev Darshan Sud, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dev Darshan Sud, J.—This application has been filed by the respondent-plaintiff under the provisions of Order VI Rule 17 of the CPC with a prayer that the plaint may be allowed to be amended. The proposed amendment to be carried out is as under:

(i) That the applicant/respondent in para-4 of the original plaint, after the words: Khasra No. 244/1/5 wants to add the following:

which in fact pertained to khasra Nos. 746/244/2 and 746/244 as well, but since in the earlier plan only khasra No. 244/1/5 was given, as such, the other 2 khasra Nos. were not mentioned in the plan.

(ii) That the applicant/respondent further wants to add at page-3, of the original plaint after the figures: 244/1/5, as under:

which in fact pertained to Khasra Nos. 746/244/2 and 746/244/ 3 as well, but since in the earlier plan only khasra No. 244/ 1/5 was given, as such, the other 2 khasra Nos. were not mentioned in the plan.

(iii) That in the prayer clause, applicant/respondent after the words: 244/1/5 wants to add as under:

which in fact pertained to khasra Nos. 746/244/2 and 746/244/ 3 as well, but

since in the earlier plan only khasra No. 244/ 1/5 was given, as such, the other 2 khasra Nos. were not mentioned in the plan.

2. The plaintiff has submitted that he is the owner of land comprised in Khasra No. 244/1/5, Khatta-Khatauni No. 103/118 min, situated in Mauja Sanjauli, Tehsil and District Shimla. He submitted a building plan to the appellant-defendant for construction of three storeyed house on this land. This plan was sanctioned by the appellant by an order dated 25.3.1977 being Order No. 84. The allegations further are that two storeys of the sanctioned plan were completed in the year 1979, much before the enforcement of the Himachal Pradesh Municipal Corporation Act, 1979. The third storey could not be constructed for various reasons. The averments further are that when two storeys which were the subject-matter of the plan were constructed, the plaintiff had encroached on land comprised in Khasra Nos. 746/244/2 and 746/244/3, measuring one biswa. This land belongs to the neighbour of the plaintiff and has been bought by him and matter settled amicably. This fact finds mention in the judgment of the learned trial Court. Since this Khasra number has not been specifically incorporated in the pleadings and construction has been made on this land also, the plaintiff has submitted that permission to amend the plaint may be granted in order to obviate any objection being raised by the appellant-defendant. Notice of this application was given to the respondent, who has resisted it on a number of grounds.

I have heard learned Counsel for the parties and have gone through the record.

3. It is by now well settled that a liberal approach is to be adopted -in allowing the amendment in pleadings. Learned Counsel has placed reliance on two judgments of the Hon''ble Supreme Court in K. Kannan v. K. Jayalakshmi (2004) 13 SCC 41 and Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others, .

In Rajesh Kumar Aggarwal and Ors. v. K.K. Modi and Ors. (supra), the Hon''ble Supreme Court held as under:

15. The object of the rule is that the 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.

16. Order VI Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the Court to order amendment of the pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the

learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of the subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub-serve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. 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.

4. It is also equally settled that the amendment can be allowed at any stage which would include the second appeal also. Learned Counsel has placed reliance on *Bakshi Singh v. Prithi Pal Singh and Ors.* 1995 (3) SCC 577.

5. Learned Counsel appearing for the appellant expressed his apprehension that the allowing the amendment might be construed as an expression on the authenticity of the cause of the respondent-plaintiff. The real controversy between the parties is yet to be adjudicated by this Court and the decision of the amendment will not in any manner affect the respective merits of the case of the parties.

6. In the circumstances, this application is allowed. The amended plaint be taken on record of the case. The respondent-appellant is granted four weeks time to file written statement.

7. The Registrar (Inspection) will fix a date after filing of the written statement for recording evidence of the parties. This application is disposed of. There shall be no order as to costs.