
(2006) 06 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 31 of 2005

Sunil Kuthiala

APPELLANT

Vs

Ajwesh Sood and Others

RESPONDENT

Date of Decision : 23-06-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 40, 40(2)

Citation : (2007) 2 CivCC 360 : (2006) 2 ShimLC 331

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Advocate : Ashok Sood, for the Appellant; M.S. Chandel, General and Ashutosh Burathoki, A.A.G. and Shilpa Sood, for the Respondent

Judgement

Deepak Gupta, J.—The present petitioner alongwith proforma respondents (hereinafter referred to as the plaintiffs) filed a suit before the trial Court against respondents No. 1. to 4 (hereinafter referred to as the defendants) praying for a decree of permanent prohibitory injunction restraining the defendants from throwing debris, stones, boulders, building material etc. on any part and portion of the suil land. Evidence was led by the parties and the case was listed for arguments. At this stage the plaintiffs filed an application under Order VI Rule 17 CPC read with Section 40(2) of the Specific Relief Act. By way of this application the plaint was sought to be amended and the petitioner in addition to the reliefs already claimed also sought the relief of damages to the extent of Rs. 63,325/-. Consequent amendments were sought to be made in the main plaint as well as in the relief clause.

2. This application was opposed by the defendants. The learned trial Court vide order dated 7th March, 2005 rejected the application basically on two grounds. The learned trial Court held that the amendment should not be allowed since a fresh suit on the amended plaint would be barred by limitation and secondly, that applying the principle of Order VI Rule 17 CPC as amended in the year 2002, no

amendment could be allowed since this was a relief which could have been claimed by the plaintiffs in the original plaint itself. Aggrieved against the said order the petitioner has filed the present revision petition.

3. Respondents No. 1 and 2 have not appeared despite service and the petition has been contested on behalf of the State only.

4. The learned trial Court, in my opinion, has totally misdirected itself in the present case. Section 40(2) of the Specific Relief Act reads as follows:

40(2) No relief for damages shall be granted under this Section unless the plaintiff has claimed such relief in his plaint:

Provided that where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

5. This is a specific provision which provides that the Court shall, at any stage of proceedings, allow the plaintiff to amend the plaint. Therefore, even in a suit in which damages should have been claimed in addition to relief of injunction and such relief was not claimed when the suit was originally filed, the amendment in this regard has to be favourably considered at any stage of proceedings. Reference in this behalf may be made to V.R. Nathan Vs. Mac Laboratories (P.) Ltd., wherein the Madras High Court held as follows:

The proviso is imperative and the Court has no option but to grant the amendment of the plaint. The fact that the application is belated is immaterial. The only discretion left to the Court is as regards the terms on which the plaintiff may be permitted to amend.

6. The Delhi High Court in Jagdish and Others Vs. Har Sarup, took a similar view and held:

Provided that where no such damages have been claimed in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

7. The language of Section 40 of the Specific Relief Act is very clear. It in no uncertain terms provides that if an amendment is sought for, the Court must allow the same and the plaintiff can amend the plaint at any stage of the proceedings. Section 40(2) of the Specific Relief Act is a specific provision providing amendment claiming damages in a suit for injunction as compared to the general law regarding amendments enshrined in Order VI Rule 17 CPC. This special law will take precedent over the general law. The special provisions of Section 40(2) are imperative in nature. The words "the Court shall at any stage of proceedings allow the plaintiff to amend the plaint on such terms as may be just for including a stage claimed" contained in proviso to Sub-section (2) of Section 40 of the Specific Relief Act leave no discretion with the Court. The Court cannot refuse the permission to the plaintiff to amend the plaint to include the

claim for damages. In fact a claim for damages is inherent in a suit for perpetual injunction and prohibitory injunction and where this relief is not specifically claimed in the original suit, amendment in this regard must be allowed at any stage of proceedings.

8. In so far as the point with regard to the applicability of the amended provision of Order VI Rule 17 is concerned, the matter is no longer res Integra. A Division Bench of this Court in CMPMO No. 188 of 2005, Keshav and Ors. v. Hari Singh and Ors., decided on May 29, 2006 has held that the amended provisions of Order VI Rule 17 CPC as amended w.e.f. 2002 will not apply to pleadings filed before that date. In the present case the suit was filed in the year 1995 and, therefore, unamended Order VI Rule 17 CPC will apply. This, however, has no material bearing on the decision of the present revision petition in view of the view taken above.

9. Keeping in view the above discussion the order of the learned trial Court rejecting the application for amendment is set aside. The plaintiffs are permitted to amend the suit, as prayed for. However, keeping in view the fact that this application has been moved almost 8 years after the suit was filed, this amendment is allowed subject to payment of costs of Rs. 3,000/-. The costs to be paid to the State of Himachal Pradesh only.

10. Keeping in view the fact that the matter has been hanging fire for the long time, it is further ordered that the learned trial Court shall take on record the proposed amended plaint which has already been filed. The plaintiff is directed to affix the requisite Court fee on the amended plaint seeking recovery of damages on or before the date fixed for appearance before the trial Court. The written statement to the amended plaint shall be filed within 4 weeks thereafter. The learned trial Court shall then frame the additional issues arising out of the amended plaint. The parties shall only be permitted to lead fresh evidence on the additional issue(s) framed. The plaintiff shall not be given more than two opportunities to lead evidence. The defendants shall also not be allowed more than two opportunities to lead its evidence. Keeping in view the fact that the case is an old one, the learned trial Court shall make efforts to decide the case as early as possible and in any event not later than 31st March, 2007. The parties who are present through their learned Counsel are directed to appear before the learned trial Court on 19th July, 2006. The learned trial Court shall not issue notice to defendant No. 2 who was already ex parte and shall only issue notice to defendant No. 1 through his Counsel for the next date fixed. The Registry is directed to send back the records of the learned trial Court so as to reach well before the next date of hearing.

11. The revision petition is disposed of in the aforesaid terms.