

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CMPMO No. 324 of 2017

Decided on: 31.7.2017

Jiwan Lal

...Petitioner.

Versus

Manohar Lal and another

...Respondents.

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? ¹ No

For the Petitioner: Mr. G.R. Palsra, Advocate.

For the Respondents: Nemo.

Justice Tarlok Singh Chauhan, Judge (oral):

This petition under Article 227 of the Constitution of India is directed against the order dated 3.7.2017 passed by learned Civil Judge (Jr. Division), Court No. IV, Mandi in CMA No. Nil in Civil Suit No. 21/17/13/10, whereby the application filed by the petitioner for amendment of the plaint came to be rejected.

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

2. It is not in dispute that it was at the time when the case was listed for final arguments that the petitioner/plaintiff filed an application for amendment of the plaint. The same was on the ground that at the time when the plaint was initially filed, the respondents started encroaching the land of the petitioner comprised in Khasra No. 287. During the pendency of the suit, a Local Commissioner was appointed, who demarcated the land and thereafter submitted his report Ext.PW-4/A, wherein it was found that the respondents/defendants had infact encroached upon the land depicted as Khasra No. 287/1 measuring 0-5-1 bighas and therefore, it had become necessary to amend the plaint to the following effect:

“Title of the suit” and for handed over the possession.

Para No.3(A): That the defendant encroached 0-5-1 bighas of land of plaintiff on the part of Khasra No. 287 and also constructed shops and some part of temple upon the encroached land of plaintiff forcibly by the defendant during the pendency of suit”.

Relief /Prayer para:

That in prayer para only introduce “and a decree be also assed directing the defendant No.2 to handed

over the vacant and peaceful possession of land measuring 0-5-1 bighas on which defendant No.2 raised construction during the pendency of the suit to the plaintiff after demolishing the same.”

3. Upon the notice being served, the respondents filed reply to the application wherein preliminary objections regarding the application having been filed at a belated stage and the proposed amendment being one which would change the nature of the suit and cause of action altogether was raised. Apart therefrom, the report of the Local Commissioner was opposed on the ground that there was no proper or legal demarcation and the same has not been conducted in accordance with law.

4. The learned trial Court after making note of the provisions of Order 6 Rule 17 CPC, rejected the application by according the following reasons:

“8. The present application falls under the proviso of order 6 rule 17 of CPC which was added by the amendment in the year 2002. The proviso was added to prevent the frivolous and unnecessary applications and also to prevent causing of unnecessary sufferings to the opposite party. In original plaint the dispute is regarding to the possession of Khasra No. 287. The fact of encroachment on valuable portion of Khasra No. 287

was alleged and by amendment the applicant want to added the exact encroached portion. It is just a normal addition because the demarcation report and spot map are already exhibited documents and shall be read in evidence against the encroacher. It hardly makes any difference as the fact of encroachment is already in the notice of court through the Local Commissioner's report. Allowing this application would result into delaying of proceedings in the name of filing written statement to the amended plaint and then re-opening of evidence. The amendment is not the real controversy in issue. The real dispute is pertaining to the encroachment over the valuable portion of suit land and the said valuable portion may be interpreted in the light of demarcation report which is already on record. So keeping in view the facts of the application and reply, the application is dismissed. The application stands disposed off. It be tagged with main case file for record."

5. Mr. G.R. Palsra, learned counsel for the petitioner has vehemently argued that the order passed by the learned Court below is perverse inasmuch as it has ignored the factual and legal position. He would further contend that the learned Court below has committed grave irregularity and illegality in ignoring the fact that the proposed amendment was formal in nature wherein the petitioner did not even intend to lead any evidence and only wanted to correct the record.

I have heard Mr. G.R. Palsra, Advocate, learned counsel for the petitioner and also gone through the records carefully.

6. As already observed above, the application for amendment was filed at the time when the case was listed for final arguments, therefore, in such circumstances and stage of proceedings, there is no indefeasible right available to the parties to amend their pleadings.

7. Undoubtedly, the plea now sought to be raised by the petitioner was not available to him at the time of filing of the suit, but nonetheless it has come on record that the Local Commissioner had submitted his report on 26.7.2014, whereas, the petitioner filed the application for amendment after 1 year 10 months i.e. on 27.5.2016 and, that too, when the case was listed for arguments. In such circumstances, it was incumbent upon the petitioner to have prima-facie satisfied the Court regarding the colossal delay of 1 year 10 months and also explain

sufficient cause which prevented him from filing the aforesaid application.

8. Mr. G.R. Palsra, learned counsel for the petitioner would vehemently argue that once the petitioner had made his intention clear that he does not intend to lead any other or further evidence in support of the amendment, then the same ought to have been allowed.

9. This contention of the petitioner is equally without merit as what the petitioner in fact intends is to bring his pleadings in tune with his evidence that has surfaced on record and the same obviously is not permissible in law, after all, it is the evidence that has to be in tune with the pleadings and not vice-versa.

10. Having said so, I find no merit in this petition and the same is dismissed in limine, so also the pending application.

**(Tarlok Singh Chauhan),
Judge.**

31.7.2017
GR