

CMA Regd. No. 1389 of 2020 in C.S. Regd. No. 3156-2013

Bidhi Chand Vs. Bansi Lal & Anr.

03.01.2023

Present:- Sh. Bharat, Ld. Advocate for plaintiff.
Sh. S.K. Kanwar, Ld. Advocate for defendant No.1.
Sh. Surdeep Thakur, Ld. Vice counsel for defendant No.2.

This order shall dispose of an application filed under Order 6 Rule 17 read with section 151 of CPC for amendment of written statement. It is averred that a suit titled as Bidhi Chand vs. Bansi Lal and Anr. is pending adjudication and that the respondent/plaintiff has alleged that the applicant/defendant no. 1 is raising construction of first storey of his house in such a way that it will block the air and light of the house of respondent/plaintiff over the suit land. It is further averred that level of respondent's house and plot is about 12 feet lower to that of the respondent's house. Further that there is a space of two meters between the construction of the parties to suit. Further, the following amendment is required to be made in para no. 3 of the written statement; after the words "competent authority",:

"Moreover, the level of plots (houses) of the parties is 12'. The level of the plaintiff is 12' at lower and plaintiff has raised the construction of first storey recently and there is a space of 2 meters from the construction of the defendant to the construction of plaintiff so there is no question of any obstruction of air and light. Site plan is attached."

2. It is further averred that the applicant was not aware about the fact regarding level of land and that the earlier counsel of the applicant had filed the written statement without mentioning the above stated facts and it was only when the then counsel visited the spot, these facts came into the applicant's knowledge. Further

that the amendment sought to be made is necessary to resolve the controversy between the parties. Hence, the present application which is supported with an affidavit.

3. The application is resisted and contested by the respondent by filing a reply wherein preliminary objection regarding non-maintainability of the present application is raised. On merits, it is submitted that the plaintiff's evidence is already closed and it is contended that the amendment sought is not necessary to decide the matter in controversy. It is further contended that as the trial has already commenced and the plaintiff's evidence is closed, the present application cannot be allowed at this belated stage and thus, it was prayed that this application be dismissed with cost.

4. Heard. Record perused.

5. Order 6 Rule 17 of CPC provides that the court may at any stage of the proceeding allow either party to alter or amend his pleading and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Further, the proviso to the rule provides that the application for amendment shall not be allowed after the commencement of trial, unless in spite of due diligence the party could not have raised the matter before commencement of trial.

6. Proviso added to Order 6, Rule 17 CPC is mandatory. In **Vidyabai vs. Padmalatha & Anr., 2009 (2) SCC 409** it was held that amendment can be allowed only if in spite of due diligence the party could not have raised the matter before the commencement of the trial and when the proposed amendment is necessary to decide the real dispute between the parties. No application for amendment moved u/o.6, rule 17 CPC should be allowed after the commencement of trial unless the court is satisfied that the party seeking amendment, despite exercise of due diligence, could not

have raised the plea or amendment before the commencement of trial. It is settled law that commencement of trial within the meaning of proviso to Order 6 Rule 17 of CPC means that issues have been framed and the case has been listed for recording the evidence. In the present case, when the present application was filed, the evidence of plaintiff had concluded and the case was listed for recording the defendants' evidence which shows that the trial had already commenced.

7. Now, in the case in hand, the applicant has averred that when the earlier counsel visited the spot, the fact regarding level of his and respondent's land came into his knowledge, however, it is pertinent to note that the trial has already commenced and the plaintiff's evidence has also closed and there are further no averments as to why the applicant earlier had no knowledge about the fact regarding the level of his land/plot. Moreover, there are no details as to when did the counsel visit the spot and the applicant came into knowledge of the above stated facts. Hence, it is apparent that the applicant could have mentioned the fact regarding the level of his plot prior to the commencement of the trial and therefore, in view of the proviso to Order 6 Rule 17, the present application cannot be allowed.

8. Therefore, in view of the above discussion, the present application is held to be meritless and the same is dismissed and is accordingly disposed of. It after needful be tagged with the main case file for record.

Now, let the case be listed for examination of Dws on 27.02.2023, steps for which be taken within 5 days.

(Anulekha Tanwar)
Civil Judge, Court No. IV,
District Hamirpur, (H.P.).