

M.M. Kumra and anr. Vs. Jitender Mohan Gupta and ors.

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SooperKanoon Citation : sooperkanoon.com/698490

Court : Delhi

Decided On : Jul-18-2003

Reported in : 2003VIAD(Delhi)507; 106(2003)DLT151

Judge : R.C. Jain, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 6, Rule 17

Appeal No. : C.R. No. 262 of 2003

Appellant : M.M. Kumra and anr.

Respondent : Jitender Mohan Gupta and ors.

Advocate for Def. : Party in person for Respondent No. 1 and ; Sushma Ambardar, Adv. for Respondent No. 4

Advocate for Pet/Ap. : Malay Chand, Adv

Disposition : Petition dismissed

Judgement :

R.C. Jain, J.

1. The order of the learned Trial Court dated 25th November, 2002 is under challenge in this revision petition. By means of this order, the learned Trial Court has disposed of an application under Order VI Rule 17 read with Section 151,

CPC moved on behalf of the plaintiff-respondent for amendment of his plaint. The plaintiff wanted to alter his relief of permanent injunction to that of a mandatory injunction and add a relief for damages.

2. The application has been allowed. The impugned order is sought to be challenged primarily on the ground that the suit for permanent injunction had become anfractuous as the petitioner-defendant had already erected the gates in question and, therefore, the very cause of action for the suit has come to an end. In the opinion of this Court, this is a wholly misconceived submission inasmuch as it is well established proposition that an amendment based on subsequent events can always be taken into account and allowed to be incorporated in the pleadings if the same are necessary for the just and proper adjudication of the controversy between the parties. In the case in hand, the subsequent event being that the gates against erection of which permanent injunction was sought, got erected by the defendant during the pendency of the suit and, therefore, the said relief of course was not available but the petitioner could very well alter his prayer from one of permanent injunction to mandatory injunction seeking demolition or removal of the said gates. There also seems to be no bar in incorporating an additional relief if the circumstances of the case so permits. In the opinion of this Court, the impugned order is eminently justified in law as well as on facts of the case and no jurisdictional error, illegality or material irregularity exists in the impugned order which calls for any interference by this Court. The revision petition being devoid of any merits is dismissed.

All pending applications are also dismissed.