

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 7335 of 2013 [O&M]
Date of Decision : March 12th, 2015

M/s K.D.Rice Mills

.... Petitioners

Versus

Hakim Rai and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. V.B.Aggarwal, Advocate,
for the petitioners.

Mr. Akshay Jindal, Advocate
for respondent No.2.

Ms. Sharmila Sharma, Advocate,
for respondent No. 7.

None for the other respondents.

Dr. BHARAT BHUSHAN PARSOON, J.

Refusal of amendment of plaint to the plaintiffs-appellants during the proceedings before the first Appellate Court, vide impugned order of 1.11.2013 [Annexure P/2], forms genesis of this revision petition.

2. A suit filed by the plaintiffs was challenged in its maintainability vide an application under Order VII Rule 11 of the Civil Procedure Code, 1908 [CPC]. Sequelly, vide order dated 2.9.2013 of the lower court, accepting the said application under Order VII Rule 11 CPC of the defendants, respondents herein, plaint was rejected. In terms of provisions of Section 2[2] CPC rejection of plaint having been statutorily taken as decree, order dated 2.9.2013 was challenged in appeal.

3. During the appeal, by way of an application for amendment of

the plaint, a plea was raised that in the plaint, consequential relief which primarily resulted in rejection of the plaint, had been claimed inadvertently and only relief of permanent injunction was the main relief sought. The word 'consequential' from the heading of the plaint as also the words "as a consequential relief" from the prayer clause were sought to be deleted and some more land was sought to be added in paragraph No. 3 of the plaint which had allegedly been purchased vide the same sale deed, vide which other land already mentioned in the plaint, had been purchased.

4. Contention of learned counsel for the revisionist is that the amendment is of formal nature and should have been allowed. Seeking support from **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Dass [D] By LRs, 2008 [3] RCR [Civil] 165** of the Hon`ble Apex Court, it is claimed that all amendments are to be allowed which do not work injustice to the other party and are necessary for the purpose of determining the real questions in controversy between the parties.

5. Support has also been sought from an authority of Co-ordinate Bench of this Court reported as **Jangir Singh Vs. Naranjan Singh and others 2015 [1] RCR [Civil] 149** wherein it was held that a co-sharer is legally entitled to protect his possession until the joint land is partitioned.

6. With due deference to the law laid down in the above cited authorities, facts of the present case are entirely different than the facts of the cited cases.

7. Amendment sought for, in fact, is rather a very clever move by the petitioners-plaintiffs in a bid to get rid of order dated 2.9.2013 which is under challenge before the first Appellate Court. It was not an innocuous application, as has been sought to be projected and has been argued by counsel for the petitioners-plaintiffs. In fact, effort of the petitioners is to change their cause of action as also the stand taken in the earlier suit entirely and absolutely and that too at the first appellate stage.

8. The amendment sought for not only works injustice to the other party, but is also not at all necessary for the purpose of determining the real questions between the parties.

9. It is, rather, to be noticed that the respondents-defendants cannot be placed in the same position as if the pleadings had been originally correct. Rather, the amendment, if allowed, would not only cause them injury, not compensable in costs, but would also bring the suit of the plaintiff in completely a different incarnation.

10. No ground. Dismissed.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

March 12th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?