

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CR No.2852 of 2016(O&M)

Decided on.06.09.2016.

Jagga Singh and another

.....Petitioners

Versus

Surjit Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.Amit Kumar Saini, Advocate
for the petitioners.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 03.03.2016 passed by the learned Additional Civil Judge (Sr. Division), Khamanon, vide which the application moved by the respondents-defendants no.1 to 9 under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amendment of the counter claim has been allowed.

2. Plaintiffs-petitioners have filed the suit for permanent injunction restraining the defendants from interfering into their peaceful possession over the property shown with letters 'X' and 'Y' detailed and described in the head note of the plaint and also from dispossessing the plaintiffs from the aforesaid land and further from making any encroachment on the plea that they are owner in possession of the property described above. Whereas, defendants have no right, title, interest, concern or connection therewith.

3. Respondents-defendants no. 1 to 9 contested the suit on the grounds *inter alia* that under the garb of the suit, petitioners-plaintiffs

intend to encroach upon the passage comprised of Khasra No. 19//28, 20//23, 23//30, 31, 24//29 situated on the eastern side of the land of the plaintiffs. It was further pleaded that they have, in-fact, encroached upon the portion of said passage and included that in their land and this suit has been filed to protect their illegal possession on the portion of the passage.

4. Along with the written statement, respondents-defendants no.1 to 9 also filed the counter claim for grant of mandatory injunction directing the plaintiffs to vacate the encroached portion of the aforesaid land.

5. During the pendency of the suit, respondents-defendants no. 1 to 9 moved an application for amendment of the counter claim. It was pleaded in the application that they had already sought the relief to direct the plaintiffs to vacate the portion of the passage encroached upon by them. But, inadvertently they could not claim the relief to restrain the plaintiffs from encroaching upon the remaining portion of the passage as the threats were continuing and by way of amendment they wanted to add the following wordings in para no.9 of the counter claim:-

“The plaintiffs are further threatening to encroach upon the remaining portion of the passage after the filing of the suit. The said threats are continuing one and provides continuous cause of action to the counter claimant to file this counter claim.”

6. They also wanted to add the following lines at the end of the prayer clause:

“and the plaintiffs be permanently restrained from encroaching upon the remaining portion of the passage in question and the counter claim be accepted with costs”

7. It was further pleaded that the said relief could not be earlier sought due to inadvertence. The said amendment will not affect the nature of the suit. In case the application is allowed, they will not lead any other evidence.

8. The said application has been contested by petitioners-plaintiffs on the grounds *inter alia* that the application is misuse and abuse of the process of law. By way of proposed amendment, defendants wants to set up a new case which would amount to denovo trial. It was further pleaded that the proposed amendment will change the nature of the suit as the defendants wants to add the new relief in the counter claim. With these pleas, they pleaded for dismissal of the application.

9. Learned trial Court on appreciating the contentions of the parties allowed the application for amendment of the counter claim moved by the respondents-defendants no. 1 to 9 vide impugned order dated 03.03.2016. Hence this revision petition.

10. I have heard Mr. Aman Kumar Saini, Advocate, learned counsel for the petitioners and have carefully gone through the paper book.

11. Initiating the arguments, he contended that the suit has reached at the stage of arguments. Practically, the trial had already concluded. At this stage, he contended that respondents-defendants cannot be allowed to file the new counter claim. To support his contentions he relied upon cases **Rohit Singh & Ors. Vs. State of Bihar (now State of Jharkhand) & Ors. 2007(1) R.C.R (Civil) 674, Amit Sharma Vs. Bimla Devi and another 2016(2) PLR 610** and

Muni Singh and another Vs. Laxmi Rai and others 2015(1) RCR (Civil) 158.

12. He further contended that the trial has already been concluded. The suit is listed before the learned trial Court for final arguments. As per proviso to Order 6 Rule 17 CPC, the amendment of pleadings cannot be allowed after the commencement of trial. He contended that defendants-respondents have not been able to show that why the relief of injunction could not be mentioned in the original counter claim inspite of due diligence. Thus, he contended that amendment of pleading at this stage is not legally permissible. He relied upon cases **Vidyabai & Ors. Vs. Padmalatha & Anr. 2009(1) R.C.R. (Civil) 763** and **Sharanjit Kaur Vs. Kulwant Singh and others 2015(1) ICC 193.**

13. He further contended that claim sought to be introduced by respondents-defendants for grant of permanent injunction is barred by limitation. The claim which has already become time barred cannot be introduced by way of amendment of pleadings. To support his contentions, he relied upon case **State Bank of Hyderabad Vs. Town Municipal Council 2007(1) R.C.R. (Civil) 416.** Thus, he contended that the learned trial Court has illegally allowed the application moved by respondents-defendants no.1 to 9 for amendment of counter claim.

14. I have duly considered the aforesaid contentions.

15. The plea raised by learned counsel for the petitioners that as the case has reached at the arguments, the filing of the new counter claim cannot be allowed is virtually against the record. It is not the case where respondents-defendants no.1 to 9 are seeking any permission to

file the fresh counter claim. This fact is not disputed that they had already filed the counter claim along with written statement wherein they have claimed the relief of mandatory injunction directing the petitioners to remove the encroachment made by them in the passage. This application has been moved by them only to add the relief of permanent injunction in the already filed counter claim by them to restrain the plaintiffs-petitioners from encroaching upon the remaining portion of the passage.

16. It is just an application for amendment of the counter claim already filed by them with the written statement and by no stretch of imagination, it can be stated that they are going to file any fresh counter claim. Thus, cases **Rohit Singh & Ors. Vs. State of Bihar (now State of Jharkhand) & Ors. (Supra), Amit Sharma Vs. Bimla Devi and another (Supra) and Muni Singh and another Vs. Laxmi Rai and others (Supra)** have no application to the facts of the case.

17. It is not disputed that the present application has been moved by defendants for amendment of the counter claim when the trial had already commenced, but the amendment sought by respondents-defendants is only an addition in the relief clause for grant of permanent injunction on the same facts already pleaded in the counter claim. There is no dispute that as per the proviso to Order 6 Rule 17 CPC, the application for amendment should not be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, the party could not have raise the matter before the commencement of the trial. But in case **Chander Kanta Bansal Vs. Rajinder Singh Anand, 2008(2) R.C.R. (Civil) 801**, the

amendment in the pleadings were sought after 18 years when the trial was at the verge of completion. The Hon'ble Apex Court held that term “due diligence” means reasonable diligence, it means such diligence as a prudent man would exercise in the conduct of his own affairs. In the instant case, respondents-defendants have pleaded that relief of permanent injunction could not be mentioned in the counter claim due to inadvertence. That could be due to negligence of their counsel. The Hon'ble Supreme Court in case **Mahila Ramkali Devi & Ors. Vs. Nandram (D) through Lrs & Ors. 2015(3) Civil Court Cases 332**, while dealing with the provisions of Order 6 Rule 17 CPC has laid down that the Court always gives relief to amend the pleadings of the parties unless it is satisfied that the party applying was acting *mala fide* or that his blunder has caused injury to the opponent, which could not be compensated for by an order of costs. It was further laid down that the rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules or procedure. It was further laid down that power to grant amendment in the pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

18. The Hon'ble Supreme Court in case **Abdul Rehman and Anr. Vs. Mohd. Ruldu & Others 2012(4) R.C.R (Civil) 481** has laid down that power to allow amendment is wide and can be exercised at any stage of proceedings in the interest of justice. In case **Ramesh Kumar Agarwal Vs. Rajmala Exports Pvt. Ltd. And others 2012(2) RCR (Civil) 739**, the Hon'ble Apex Court has laid down that ordinarily

the Court must not refuse *bona fide*, legitimate, honest and necessary amendments and never permit *mala fide* and dishonest amendments. It was further laid down that liberal approach should be the general rule, particularly in the cases where other side can be compensated with costs. It was further laid down by the Hon'ble Apex Court that normally the amendments are allowed in the pleadings to avoid the multiplicity of litigation. It is settled law that all the amendments which are necessary for the purpose of determining the real question in controversy between the parties should be allowed if it does not change the basic nature of the suit. The powers to allow amendments should be exercised in the larger interest of doing full and complete justice between the parties.

19. In the instant case, the amendment sought by respondents-defendants no. 1 to 9 in the counter claim is *bona fide*, legitimate, necessary to determine the real question in controversy and to avoid the multiplicity of litigation. The amendment sought is not going to change the nature of the suit as by way of amendment the respondents-defendants want to seek the relief of permanent injunction on the facts already mentioned in the counter claim. The amendment sought will also not result in any loss or prejudice to the rights of the petitioners nor it will prolong the proceedings of the suit as the respondents-defendants have categorically mentioned that in case their application is allowed, they will not lead any fresh evidence.

20. In **Vidyabai's case (Supra)** relied upon by learned counsel for the petitioners entirely new case was sought to be made by way of amendment. But, in the instant case, the proposed amendment will not

change the nature of the suit. Respondents-defendants are not introducing any new case. They are just adding the relief of permanent injunction on the basis of the facts already pleaded. Thus the cases relied upon by learned counsel for the petitioners are quite distinguishable on facts.

21. Learned counsel for the petitioners could not show me any statutory provision under the Limitation Act 1963 (for short Act) as to what period of limitation is prescribed for a suit for permanent injunction. It has been categorically pleaded in the application moved by the respondents-defendants that plaintiffs are threatening to encroach upon the remaining portion of the passage after the filing of the suit. The said threatening are continuing one and provides continuous cause of action to the counter claimants. Section 22 of the Act reads as under:-

“22. Continuing breaches and torts.—In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.”

As per the aforesaid provision of law, in case of continuous breach of contract or in case of continuing tort a fresh period of limitation begins to run at every moment of time during the period, the breach or tort may continue.

22. Thus, it cannot be stated that the amendment sought is barred by limitation. Reliance can be placed on cases **Swaran Lal Vs. Municipal Corporation, Jullundur 2000(1) R.C.R (Civil) 358** and **Hari Ram Vs. Jyoti Prasad and another 2011(2) R.C.R (Civil) 515.**

23. Thus, keeping in view my aforesaid discussion, I do not

find any illegality in the impugned order passed by the learned trial Court, which does not call for any interference by this Court.

24. Resultantly, the present revision petition having no merits, is hereby dismissed.

06.09.2016

S.khan

(DARSHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No