

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

CR No.5700 of 2016(O&M)

Date of decision:2.9.2016

Sachin and others

....Petitioners

VERSUS

Jaswant Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Viney Saini, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 08.08.2016 (Annexure P-5) passed by the Additional Civil Judge (Senior Division), Shahabad whereby application filed by the respondent/plaintiff Jaswant Singh for amendment of the plaint has been allowed.

Counsel for the petitioners has submitted that Jaswant Singh originally filed a suit for permanent injunction restraining defendant No.1 Gurnam Singh Master, from giving amount of Rs.36,000/- in question to defendants No.2 to 9 (petitioners herein) till decision of the suit Radha Devi vs. Sachin etc. It is further argued that as defendant No.1 parted with the said amount in favour of defendants No.2 to 9 (petitioners herein) and even the suit Radha Devi vs. Sachin etc. has been dismissed in default on 23.12.2014, claim of respondent/plaintiff for grant of injunction has been rendered infructuous. It is further argued that to save his suit, the respondent/plaintiff filed the instant application seeking amendment of the plaint to convert the suit for injunction to that of recovery and the same has been allowed by the trial Court without appreciating that original cause of action has been rendered infructuous and even Court fee has not been paid.

I have heard counsel for the petitioners, perused the paper-book particularly the annexures appended with the petition.

Counsel for the petitioners, on a pointed query raised by the Court, has not disputed that the respondent/plaintiff in the circumstances can file an independent suit for recovery. It has further not been disputed that in response to the application for amendment of plaint, no such plea has been raised by the petitioners that claim of the respondent/plaintiff for recovery of Rs.36,000/- is barred by limitation and therefore, allowing of application would cause such a prejudice to the petitioners for which they cannot be compensated with costs.

As cause of action to file the suit for recovery accrued to respondent/plaintiff during pendency of the proceedings and the respondent is competent to maintain an independent suit for recovery and no such plea with regard to limitation was raised by the petitioners/defendants, no error much less illegality has been committed by the Court below to allow amendment of the plaint which would otherwise avoid multiplicity of proceedings between the parties. So far as the plea that respondent/plaintiff has not paid requisite Court fee, the petitioners would be at liberty to raise such an issue before the trial Court.

With these observations, finding no merit, the petition is dismissed.

SEPTEMBER 2, 2016

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no