

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

CR No.6711 of 2016(O&M)

Date of decision: 30.10.2017

Harbans Lal and another

.....Petitioners

VERSUS

Dharam Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Abhishek Singla, Advocate for the petitioners.

Mr. P.K.S Phoolka, Advocate for respondent No.1.

REKHA MITTAL, J.

The present petition directs challenge against order dated 01.09.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Bathinda whereby application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in short 'the Code') for amendment of the plaint filed by the respondent/plaintiff has been allowed.

Counsel for the petitioners/defendants No.2 and 3 would argue that the respondent/plaintiff Dharam Singh filed a suit for possession of land measuring 5 bighas 14 biswas situated within the revenue estate of Patti Mehna, Bathinda detailed in head-note of the plaint. After commencement of trial, the plaintiff filed an application dated 27.04.2012 for amendment of the plaint seeking change in description of land from 5 kanals 14 marlas to 5 bigha 14 biswas and the same was allowed. The amended plaint dated 27.04.2012 was filed to which the petitioners filed amended written statement dated 09.12.2013. It is argued that after lapse of about 6 years when the respondent/plaintiff has almost concluded his

evidence, the instant application was filed to claim relief of mesne profits of Rs.1,20,000/- from Rabi 2013 to Rabi 2016. It is argued that the proposed amendment is clearly hit by the proviso appended to Rule 17 of Order 6 of the Code, therefore, the same cannot be allowed. Another submission made by counsel is that the proposed amendment would change the entire scope of the matter, thus, the application for amendment is liable to be rejected.

Counsel for the respondent/plaintiff, on the contrary, has supported the impugned order with the submissions that adding the relief for claiming mesne profits from Rabi 2013 to Rabi 2016 would not change nature of the suit fundamentally or constitutionally. It is argued that relief of mesne profits is based upon the case already set up by the respondent/plaintiff in the original suit. Another submission made by counsel is that petitioners have failed to make out a case that the proposed amendment will cause such a serious prejudice to them for which costs is not the remedy more particularly in the circumstances that denovo trial would be conducted because of Tarsem Chand – defendant No.1 in the suit has been declared mentally unfit and directed to be represented through a guardian vide order dated 08.07.2016 and written statement on his behalf through Sh. Jagkaran Singh, Advocate, appointed as guardian is yet to be filed in the case.

I have heard counsel for the parties, perused the paper-book particularly the application for amendment and the order impugned.

The respondent/plaintiff has filed a suit for possession of land against Tarsem Chand and others. In the original plaint, the area of land was mentioned as 5 kanals 14 marlas which was later corrected as 5 bighas 14 biswas, though details of the khasra numbers and their area was

correctly mentioned in the head-note of the original plaint. The instant application was filed by the respondent/plaintiff after commencement of trial and examination of certain witnesses. By way of the proposed amendment, the respondent/plaintiff has added the relief of recovery of mesne profits for a period of three years w.e.f. Rabi 2013 to Rabi 2016. On a pointed query by the Court, counsel for the petitioners has fairly conceded that with regard to claim for mesne profits of the period in question, the respondent/plaintiff could file an independent suit without any question of limitation being involved. If the respondent/plaintiff could file an independent suit for recovery of mesne profits for the relevant period, allowing of the proposed amendment would rather avoid multiplicity of proceedings between the parties. Analysed from another angle, relief qua mesne profits added by way of amendment is based upon the background already set out in the original plaint, therefore, the proposed amendment would not change nature of the suit fundamentally or constitutionally.

Counsel for the petitioners has not disputed the factual observations recorded in para 6 of the impugned order that Tarsem Chand – defendant No.1 has been declared mentally unfit and a guardian has been appointed on his behalf to contest the proceedings and as a consequence, there would be denovo trial after filing of written statement by him (defendant No.1). Even otherwise, delay in conclusion of proceedings would adversely affect claim of the respondent/plaintiff seeking a decree of possession of the suit land and would not result in any prejudice to the petitioners, enjoying fruits of land claimed by the plaintiff.

Counsel for the petitioners has miserably failed to make out a case that the trial Court has committed any error by allowing the

application which needs to be rectified in exercise of jurisdiction under Article 227 of the Constitution of India. As a matter of fact when the facts and circumstances of the instant case are examined in the light of principles culled out by Hon'ble the Apex Court in Revajeetu Builders and Developers Vs. Narayanaswamy & sons and others, 2010(1) RCR (Civil) 27, there is no scope for intervention in the order impugned.

For the foregoing reasons, the petition fails and is accordingly dismissed. However, nothing stated hereinbefore shall be construed as an expression of opinion on merits of the case.

OCTOBER 30, 2017

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no