

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

**Civil Revision No.8619 of 2015
Date of Decision:-25.1.2018**

Chand Kaur and others

...Petitioners

Versus

Bimla Devi and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Chirag Kundu, Advocate
for the petitioners.

Mr. Rajesh Bansal, Advocate
for respondents No.1 to 3, 5,6,8 to 13.

AMIT RAWAL J.(Oral)

The petitioners-plaintiffs are aggrieved of the impugned order whereby the application seeking amendment of the plaint instead of claiming the relief of Rs.5,00,000/- as damages wanted to add as Rs.50,00,000/- was dismissed.

Mr. Chirag Kundu, Advocate learned counsel for the petitioners submits that the suit was instituted in the year 2011 claiming damages on account of the fact that the petitioners-plaintiffs were prevented to cultivate the land despite the same being in ownership. In this regard he has referred to para 12 of the plaint to show that though initially damage was sought to be claimed of Rs.50,00,000/- but due to the non-availability

of the Court fee, the compensation was reduced to Rs.5,00,000/- as mentioned in paragraph 13 of the suit. He further submitted that no other evidence is required to be led as the entire evidence has been led and also ready to pay the Court fee on this amount. The Court abdicated in not noting the aforementioned fact and even the provisions of Order 2 Rule 2 CPC in a suit for damages do not apply.

Mr. Rajesh Bansal, Advocate learned counsel appearing on behalf of respondents submits that the suit is barred by the provisions of Order 2 Rule 2 CPC. The amendment at this stage cannot be allowed as valuable rights have been accrued in favour of respondent-defendant and the amendment sought tantamount to change the nature of the suit.

I have heard learned counsel for the parties and appraised the paper book.

The law on the payment of Court fee in the suit for damages is no longer res integra. The aforementioned view of mine is derived from the judgment rendered in **Subhash Chander Goel vs. Harvind Sagar 2003 AIR (Pb) 248** wherein it has been held that in a suit for damages the Court fee has to be ascertained at the final stage and not at initial stage. Before proceeding further it would be relevant to reproduce paragraph 12 and 13 of the plaint is as under :-

“12. That due to the illegal acts of the defendants, the plaintiff could not cultivate the suit land and the same is not utilized for the last 2 years, thus the plaintiff has become under heavy debt and she and his ailing husband and daughter are living at the

mercy of God. In this way the plaintiff has suffered a financial loss of Rs.50,10,000/- on account of crop loss.

13. That the defendants did not allow the plaintiffs to cultivate their land from Kharif, 2010, Rabi 2011, Kharif 2011 and Rabi 2012 over the land had to be kept un-cultivated during this period which fact is established from the Khasra Girdawari prepared by the revenue authorities on the spot. If the defendants had not prohibited the plaintiffs, from cultivating the land then in Kharif 2011, there would have been paddy crop in about 46 acres to the tune of 1150 quintal, @ Rs.1100/- per quintal worth Rs.12,65,000/- and the Rabi 2011, the wheat crop would have been to the tune of 900 quintal, @ Rs.1200/- per quintal worth Rs.10,80,000/- in Kharif 2011, there would have been paddy crop in about 46 acres to the tune of 1150 quintal @ Rs.1300/- per quintal worth Rs.14,95,000/- and the Rabi 2012, the wheat crop would have been to the tune of 900 quintal @ Rs.1300 per quintal worth Rs.11,70,000/-. In this way the act of the defendants not allowing the plaintiff to cultivate their land, caused a loss of Rs.50,10,000/- to the plaintiffs. The defendants are liable to compensate the plaintiffs for this loss. The plaintiffs are not in a position to bear the court fee on this huge amount, so the plaintiffs are claiming only Rs.5,00,000/- as compensation from the defendants, on which proper court fee is affixed.”

A conjoint reading of the reproduced paragraphs the

petitioners-plaintiffs has confined his prayer claiming damages to the tune of Rs.5,00,000/- due to non-availability of the Court fee. This aforesaid plea would not be hit by Order 2 Rule 2 CPC , no harm would be caused as the petitioners-plaintiffs ready to affix the Court fee and it does not amount to change the nature and character of the suit much less the cause of action. The application under Order 6 Rule 17 CPC seeking amendment was moved in correct perspective.

Accordingly, the impugned order is set aside being illegal and not appreciating the provisions of law much less same is found without jurisdiction. Civil revision petition is allowed subject to the payment of cost of Rs.5000/-.

January 25, 2018
Vijay Asija

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No