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

**Civil Revision No.8334 of 2018
Date of Decision: 17.07.2019**

**Smt. Rajnish Sharma @ Raj Sharma Petitioner
Vs
Khem Chand (deceased) through LRs and others
.....Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Adarsh Jain, Advocate
for the petitioner.

Mr. Kulbhushan Sharma, Advocate with
Mr. Abhishek Sharma, Advocate
for respondents No.2 to 5.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 10.10.2018 passed by the Addl. District Judge, Palwal vide which the prayer for amendment of plaint to incorporate name of Smt. Parveen as defendant No.6 was rejected.

[2]. Brief facts are that the petitioner/plaintiff filed a suit for declaration and possession by way of partition with consequential relief of permanent injunction. Only five defendants were impleaded. In Para No.1 of the plaint, sister of the plaintiff was also pleaded to be defendant No.6, but she was not arrayed as defendant No.6 in the memorandum of parties.

No averments were made in the plaint in respect of entitlement of defendant No.6. The prayer made in the plaint were to the following effect:-

- “a) A decree of declaration in favour of the plaintiff against the defendants directing them to hand over the possession of the shops constructed by them on the land in dispute, land admeasuring 478 Sq. yards situated at the southern part, marked in red colour in the site plan annexed of the land in dispute as per oral family agreement.*
- b) A decree of declaration declaring the plaintiff to be the actual exclusive owner of the southern part of the land in dispute admeasuring 478 Sq. yards.*
- c) A decree of permanent injunction, restraining the defendants, their agents or any other person claiming under them from selling, transferring, alienating or creating third party rights and/or carry on any construction in the land in dispute.*
- d) A preliminary decree for partition after declaring the shares of the plaintiff and defendant no.1 to 3 in the land in dispute, may be passed in favour of the plaintiff and against the defendants.*
- e) That after passing of the preliminary decree of partition, a Local Commissioner may be appointed to suggest the mode of partition by metes and bounds of the property in dispute.*
- f) Therefore a final decree of partition may be passed.*
- g) Any other relief or order that this Hon'ble court deems fit and proper be also granted in favour of the plaintiff.”*

[3]. Prayers no.(a) and (b) were made in respect of declaration based on facts as mentioned in para No.7 and 13 of

the plaint. Prayers nos.(c) to (e) were made in respect of partition of the suit land. The trial Court vide judgment and decree dated 31.03.2016 dismissed the suit with costs. The suit was held to be bad for non-joinder of sister. All the necessary parties were not joined. The suit was also dismissed on merits.

[4]. In appeal filed by the plaintiff before the lower Appellate Court, an application was filed for amendment of the plaint by way of adding name of Smt. Parveen as respondent/defendant in the appeal and suit. Bare perusal of the application would show that only impleadment of Smt. Parveen was sought as respondent/defendant No.6 without pleading anything about her entitlement in the joint property. The pleadings in terms of Order 6 Rules 2 and 4 CPC were not made.

[5]. During the course of trial before the trial Court, the plaintiff had admitted in her cross-examination that she had joined her brothers namely Sudesh Sharma and Umesh Sharma as defendants No.4 and 5 and had not joined her sister Parveen Sharma. The factum of non-joining of Parveen Sharma was admitted by the plaintiff in her cross-examination, still the suit was not sought to be amended during currency of the trial and the plaintiff allowed the trial Court to pass judgment and decree on merits.

[6]. I have considered the submissions made by learned

counsel for the parties.

[7]. Plaintiff has sought declaration and partition on the basis of Will Ex.P-2, so it is not a simpliciter suit for partition, where the plaintiff and the defendants would interchange their position as they would get their due share in the partition irrespective of their status of being plaintiff and defendants. In view of declaratory suit on the basis of Will, the issue of non-joinder of necessary party would acquire significance. The prayer made in the application for amendment is only for impleading Smt. Parveen as respondent/party defendant No.6 in the suit. The application is conspicuously silent about the pleadings in the corresponding paragraph of the plaint.

[8]. In view of Sub-Rule 2 of Order 6 Rule 17 CPC, every application for amendment shall be in writing and shall state the specific amendments which are sought to be made, indicating the words or paragraph to be added, omitted or substituted in the original pleadings. The application for amendment filed before the lower Appellate Court is totally silent with regard to aforesaid requirement in terms of Order 6 Rule 17(2) CPC. The recital in para No.1 of the plaint, if read in conjunction with the admission of the plaintiff in her cross-examination would show that the plaintiff never considered Smt. Parveen to be a necessary party in the suit. The declaration sought by the

plaintiff would also affect ultimate share of Smt. Parveen. It is not a simpliciter case of partition that during course of partition the share of Smt. Parveen would be separated for her ultimate use in accordance with law. In case, declaration is to be granted, then in all eventuality share of Smt. Parveen cannot be ignored being necessary party in the suit.

[9]. Even if the controversy is viewed from the angle of Order 1 Rule 9 CPC, it can be seen that prior to the Amendment Act 104 of 1976, the provision was that no suit shall be defeated for the reason of mis-joinder or non-joinder of the parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Vide the aforesaid, Amendment Act, a proviso was added which reads as under:-

“Provided that nothing in this Rule shall apply to non-joinder of a necessary party”.

[10]. In view of aforesaid position, non-joinder of a necessary party, who ought to have been joined as party and in whose absence no effective decree could have been passed, would entail in dismissal of the suit. Failure to implead necessary party would result in dismissal of the suit. Even by way of proposed amendment, the petitioner has not shown any proposed pleadings in terms of Order 6 Rules 2 & 4 CPC. The pleadings

should contain a statement in a concise form of the material facts of which the plaintiff relies for her claim. In the absence of such pleadings the plaintiff cannot lead any evidence.

[11]. The plaintiff has prayed for amendment at the appellate stage in order to nullify the effect of judgment and decree of the trial Court. The pleadings in para No.1 of the plaint coupled with admission in cross-examination in respect of physical existence of Smt. Parveen would show that the plaintiff was in the knowledge of the fact and she did not implead Smt. Parveen intentionally. It may also be possible that Smt. Parveen may have sided with the plaintiff and that is why the plaintiff never thought it appropriate to implead her in the suit. In any case, if indulgence is granted at the appellate stage that would nullify the effect of judgment and decree passed by the trial Court on merits and that would cause prejudice to the respondents.

[12]. For the reasons recorded hereinabove, I find that there is no justification to interfere with the impugned order passed by the Addl. District Judge, Palwal, dismissing the prayer of amendment of the suit at the appellate stage. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

July 17, 2019

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Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No