

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

**CR No. 8620 of 2016
Date of Decision: 16.01.2020**

Balbir Singh

....Petitioner

Versus

M/s Gainda Ram and Om Parkash
Commission Agent and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rakesh Nagpal, Advocate
for the petitioner.

Mr. Hardeep Singh Kasan, Advocate
for respondents No. 1 and 2.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff has filed the present revision petition against order passed by learned trial Court rejecting an application filed for permission to amend of the plaint.

From the reading of the plaint, it appears that the plaintiff is the owner of agricultural land whereas defendants No. 1 to 7 are partners/proprietors running two firms M/s Gainda Ram Om Parkash Commission Agent and M/s Garg Trading Company. It has been claimed that the plaintiff has been selling agricultural produce of his agricultural land through the defendants. Prayer clause of the unamended plaint reads as under:-

“It is therefore prayed that keeping in view of the above said facts and circumstances the suit of the plaintiff please be decreed by directing the defendants No. 1 to 7 to issue him the whole details of his accounts for the season of November 2012 of paddy crops and April 2013 for wheat crops respectively and make payment of his paddy and

wheat crops of both season, further the defendants No. 8 also be directed not to make any interference into the lawful and peaceful claim of plaintiff in any manner be passed with cost in favour of plaintiff and against the defendants, in the interest of justice.

Any other relief for which, the plaintiff found entitled may also be granted in favour of the plaintiff and against the defendants.”

Defendants No. 1 and 2 filed written statement and contested the suit. When the suit was at a preliminary stage, the plaintiff filed an application seeking permission to amend the plaint with a view to substitute the relief of rendition of account already prayed for with, consequential relief of recovery of amount of the agricultural produce sold through defendants No. 1 and 2. Following amendments were sought to be incorporated in the plaint:-

“a) Suit for declaration and mandatory injunction with consequential relief of recovery of the amount of crops.”

b) That defendants No. 1 and 2 being proprietors are running the firm as defendant No. 1 under the name and style of M/s Gainda Ram Om Parkash and the defendant No. 2 is the owner of the said firm.

c) That defendants No. 1 and 2 also instructed the plaintiff to sell his next wheat crop at the shop of M/s Garg Trading Co. Cheeka and Ramthali belonging to Durga Dass, Ved Parkash, Surinder Kumar sons of Sh. Des Raj having their shop No. 7 at Ramthali. The defendant No. 2 has also issued Kachi Parchies to the plaintiff as annexed with the plaint whereas the firm M/s Garg Trading Co. and Durga Dass, Ved Parkash and

Surinder Kumar have issued the “J” Forms of their firm against the wheat crop for the season of April 2012 against the ordinary slip attached with the plaint.

d) That after passed period of 6 to 8 months, the plaintiff himself injured in a road side accident in the month of June 2014 and he remained admit in various hospitals and finally when the plaintiff recovered from his health he again contacted with the defendant No. 2 to issue the detail of his account for his paddy crops of season November 2012 and wheat for the season April 2013. The defendants No. 1 and 2 in connivance with Durga Dass, Ved Parkash and Surinder Kumar the proprietors/owners of firm M/s Garg Trading Co. again started making different excuses on the pretext of registered of criminal case at P.S. Cheeka as well as injuries. The defendant No. 2 also kept some original slips (Kachi Parchies) on the promise to prepare “J” Forms of his account for paddy crops of November 2012 but after lingering the matter day after tomorrow and even refused to return the same and refused to admit the claim of the plaintiff.

e) That defendant No. 2 along with Durga Dass, Ved Parkash and Surinder Kumar who are the owners of firm M/s Garg Trading Co. in connivance with Inspector of CIA Staff Kaithal moved a false complaint before police authorities at Kaithal which is bad in the eyes of law and same is void ab initio and not binding upon the plaintiff in any manner. The said complaint was filed in lieu of counter blast just to grab the original ordinary slips and other documents from the lawful custody of plaintiff and even to execute some false and bogus agreement under pressure just to save his skin from the legal liability.

f) That plaintiff has made several requests to defendants No. 1 and 2 to admit the claim and give the accounts and also make the payment but they have refused to admit the same and also refused to give information regarding the sale of the crops of Rabi 2013 which they have got sold through the commission agency of Garg Trading Co. running their shop at Cheeka and Ramthali through Ved Parkash, Durga Dass and Surinder Kumar but this have refused to admit the same and hence, this suit.

g) 11(a) That plaintiff is entitled to rendition of account and declaration of detail of his dealings with the defendants and also the transactions done in the year 2012-2013 and 2013-2014 and rendition of the accounts and also to the recovery of amount found due by passing a decree of recovery.

11(b) That although the total amount due against the defendants No. 1 and 2 regarding the crops mentioned in para No. 5 of the plaint and the amount received by the plaintiff is not clear and definite but a tentative amount to be recovered by the plaintiff from defendants No. 1 and 2 regarding the crops of Kharif 2012 to the tune of Rs. 4,00,000/- is being claimed.

h) That value of the suit for the purpose of Court fee and jurisdiction is Rs. 4,00,000/- and a court fee stamp of Rs. 24,800/- is being affixed on the plaint.”

The aforesaid application was contested by the defendants No. 1 and 2. It may be noted here that plaintiff had already given up claim against defendants No. 3 to 8 with permission of the Court to file independent suits against them.

Learned trial Court dismissed the application with following observations:-

“By way of present application the applicant/plaintiff seeks court permission to amend the present suit from suit for declaration, mandatory injunction with consequential relief of rendition of accounts, to a suit for recovery of money. It is pertinent to mention here that to the main suit of the plaintiff, the defendants have already filed written statement and counter claim in which the defendants have sought a money decree of Rs. 5,25,608/- i.e. Rs. 3,58,608/- as principal and Rs. 1,67,000/- as interest calculated upto 27.5.2015 and regarding which the defendants have already affixed court fee stamp of Rs. 29,500/-. Now, since the plaintiff wants to change the relief in the present suit and the prayer made by plaintiff is on an entirely different footings then the pleadings in the present suit and from the contents of the present application it is clear that the new case is being set up by the plaintiff which is on a completely different set of averments as the basis of the contention of plaintiff is rendition of accounts, which has absolutely no connection with the right of recovery if any. Although the law of amendment of plaint is liberal but at the same time when nature of the suit of plaintiff is being changed completely and in response to the earlier suit, the defendant has already filed a counter claim, thus, this Court comes to the conclusion that the present application is not tenable in the eyes of law. The authorities cited on behalf of applicant are not applicable to the facts of present case and in none of the said authority, the defendant had filed his counter claim. Therefore, this Court does not deem it fit to allow the present application and the same is hereby dismissed.”

Learned counsel for the petitioner contends that suit is at initial stage as even issues in the suit have not been framed. The plaintiff has already filed suit for rendition of account and now by filing an application,

He submits that remaining amendments prayed for are consequential, therefore, the learned trial Court erred in dismissing the application.

On the other hand, learned counsel for the respondent has submitted that the application could not be allowed as the nature of the suit is sought to be changed. The pleadings are being substantially amended and therefore, such amendment in the plaint can not be permitted. Now, an entirely new case is sought to be set up by amending the plaint.

This Court has considered the submissions and finds that the Ld. Additional Civil Judge, Senior Division has erred in dismissing the application for amendment of the plaint particularly when the suit was at initial stage. Plaintiff has already filed a suit for rendition of account on the ground that he has not been completely paid the sale price of the agricultural produce sold through the defendant firm. The amendments sought in the plaint are only consequential. Basically, plaintiff is elaborating and clarifying the existing/unamended pleadings.

It is well settled that rules of procedure are meant to advance the cause of justice. In such circumstances, particularly when the suit was at initial stage, the Court should have been liberal in permitting the amendment.

Plaintiff by filing the original suit has given certain details. However, the plaintiff claims that he has now acquired complete knowledge of the facts and therefore, he wants to amend the prayer and deposit consequential Court fee. Such amendment can not be said to be changing the nature of the suit.

Next argument of the learned counsel for the respondent is equally without substance because on reading of the proposed amendments as reproduced above, it is apparent that all amendments are in line with the original pleadings. Learned counsel for the respondent fails to draw the attention of the Court to any contradiction or withdrawal of admission in the original as well as proposed amended pleadings.

In view of the aforesaid, petition is allowed. Order under challenge is set aside. The plaintiff shall be permitted to deposit the necessary Court fee and file amended plaint. Thereafter, the learned Court would proceed with the matter in accordance with the law.

Petition allowed.

(ANIL KSHETARPAL)
JUDGE

16.01.2020
Maninder

Whether speaking/reasoned	:	Yes
Whether reportable	:	No