

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

CR-379-2018 (O&M)

Date of decision: 17.03.2022

Akko Kaur (through her LRs)

.....Petitioner

versus

Ajit Singh and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Abdul Shehbaz Thind, Advocate
for the petitioner.

Mr. Sham Lal Bhalla, Advocate
for the respondents.

FATEH DEEP SINGH, J.

CM-1104-CII-2018

In view of the averments made in the application and in the interest of justice, the same is allowed subject to all just exceptions.

CM stands disposed off.

CR-379-2018

In a civil suit titled as 'Akko Kaur (through her LRs) versus Ajit Singh and another' by way of suit for permanent injunction restraining the defendants from interfering in the

possession of the plaintiffs in the land detailed and described in the plaint was pending before the Court of the learned Civil Judge (Senior Division), Ludhiana.

During the course of the trial of the suit, an application under Order 6 Rule 17 read with Section 151 CPC was moved by the plaintiff now petitioner, seeking amendment of the plaint to incorporate the factum that legal representatives of the plaintiff-Akko Kaur (who has since died) with a view to protect their propriety rights in the suit property had also filed a suit for declaration with a relief for permanent injunction titled as 'Tehal Singh and another versus Mewa Singh and others' in which the respondent-Jarnail Singh, was also a party and the same is pending adjudication in a Court of the learned Civil Judge (Senior Division), Ludhiana. The trial Court of the learned Civil Judge (Junior Division), Ludhiana vide impugned order dated 06.12.2017 (Annexure P-4), had dismissed the application for amendment of the plaint imposing a cost of Rs.1,000/-. Aggrieved over the same, the instant matter has come about.

Heard learned counsel for the parties and perused the records.

It is not displaced Mr. Abdul Shehbaz Thind, Advocate

for the petitioner and Mr. Sham Lal Bhalla, Advocate for the respondents that it was during the pendency of the present matter, the second suit was filed which besides seeking relief of permanent injunction is also seeking relief of declaration. A clear distinction has to be made that the second suit is not simplicitor a suit for permanent injunction but the primary relief is that of a declaration. More so, it is well settled law that every passing moment may give a fresh cause of action to a party to institute a suit for permanent injunction and can by no means a legal hitch in its institution. The learned Court below primary on the grounds that the application has been moved belatedly had imposed the cost and the fact that the proposed amendment is nowhere helpful in deciding the suit in controversy quite oblivious that in a simplicitor suit for permanent injunction title is not to be gone into and it is only if a declaration is sought, can be looked into by the Courts. How the second suit is barred during the pendency of the first suit could not be deciphered either by the counsel for the two sides or the Court below in the impugned findings. The Supreme Court in its judgment titled as 'Sampath Kumar versus Ayyakannu and another' 2002 (4) R.C.R. (Civil) 566 had clearly held that where a alleged cause of action for the reliefs which are sought to be added have arisen during the pendency of the suit and the very merits of the averments sought to

be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment and, therefore, it was held that as follows:-

“12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by plaintiff are not correct it is open for the defendant to take such pleas in the written statement and if the plaintiff fails in substantiating the factual averments and/or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for before the commencement of the trial.”

In light of the foregoing contentions, the impugned order is certainly legally infirm and needs to be set aside by way of acceptance of the present revision petition.

The present revision petition is allowed accordingly.

17.03.2022

Neha

**(FATEH DEEP SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No