

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(204)

CR-553-2019

Date of Decision : 27.10.2022

Smt. Mufeda

....Petitioner

Versus

Adimal (deceased) through his LRs.

....Respondents

CORAM : HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Adarsh Jain, Advocate, for the petitioner.
Mr. Tanmoy Gupta, Advocate, for the respondents.

HARKESH MANUJA, J. (Oral)

By way of the present revision petition, challenge has been made to order dated 05.01.2019 passed by the Additional District Judge, Palwal, whereby application filed at the instance of the petitioner-plaintiff for seeking amendment of the plaint has been declined.

The facts leading to present revision petition are that the petitioner-plaintiff filed a suit for declaration claiming herself to be owner in possession of the suit property based on Civil Court decree dated 04.06.1986. The petitioner-plaintiff also prayed for permanent injunction with a prayer for restraining the respondent-defendants from interfering in her peaceful possession over the suit property i.e. an agricultural land situated in Village Kalwaka, Tehsil Hathin, District Palwal. The suit filed by the plaintiff was dismissed by the learned Civil Judge (Jr. Division) Hathin, vide judgment and decree dated 15.07.2015. While dismissing the suit, the learned trial Court also recorded that the petitioner-plaintiff had failed to prove her possession over the suit property. Aggrieved against the

judgment and decree dated 15.07.2015, an appeal was filed before the First Appellate Court. Along with the first appeal, the petitioner-plaintiff also moved an application under Order VI, Rule 17 CPC with a prayer for seeking amendment so as to incorporate the following lines in para 12 of the original plaint:-

“If the plaintiff is not found to be in possession of the suit lands stated in para no.1(a) and (b) of the plaint, then in that case a decree of possession as a consequential relief thereof.”

Notice of the aforesaid application was served upon the respondent-defendants, who filed their reply.

Learned Additional District Judge, Palwal, vide order dated 05.01.2019 has dismissed the application filed on behalf of the petitioner-plaintiff. The prayer made by the petitioner-plaintiff as regards the amendment of the plaint has been dismissed by the Court of Additional District Judge Palwal, primarily on the ground that in view of the proviso incorporated under Order VI Rule 17 CPC, amendment cannot be allowed after framing of the issues.

By way of present revision petition, learned counsel for the petitioner submits that since the suit for declaration filed at the instance of the petitioner-plaintiff is based on her title/ownership, incorporation of a prayer for relief of possession is not going to either change the cause of action or even the nature of the suit. He further submits that the amendment sought to be incorporated will help the First Appellate Court to decide the dispute inter se between the parties in a complete and effective manner. He also submits that he undertakes not to lead any evidence in support of the amendment sought for in the application.

On the other hand learned counsel for the respondent-defendants submits that there has been an inordinate and unexplained delay on the part of the petitioner-plaintiff in seeking the amendment with regard to the possession of the suit property. He further submits that in the facts and circumstances of the present case, the petitioner-plaintiff has not acted with due diligent as the application in hand has been filed once the trial Court has recorded its finding on the point of her possession over the suit property.

I have heard learned counsel for the parties and gone through the paper book and I find substance in the submissions made on behalf of learned counsel for the petitioner.

The suit for declaration as well as permanent injunction filed at the instance of petitioner-plaintiff is based on her title/ownership. Though a finding on the issue of title as well as the possession has been recorded against her by the learned trial Court, which has been challenged before the learned First Appellate Court, incorporation of prayer for relief of possession in the plaint by way of amendment even at the stage of first appeal is not going to change the nature of the suit or even the cause of action. In case the petitioner-plaintiff is able to establish her title over the suit property, she always has right to seek possession of the same based on her title and such a substantial right cannot be defeated merely on the basis of delay. The amendment sought to be incorporated in the plaint would rather help the Court to adjudicate upon the lis between the parties in a complete and effective manner, whereas on the other hand, in case the prayer made in the application is declined, the petitioner-plaintiff will suffer serious prejudice to her rights in the suit property. Even otherwise,

the petitioner-plaintiff has already submitted that she will not lead any evidence in support of amended pleadings and would claim her right based on the evidence already existing on the records.

I have gone through the impugned order.

A perusal of the impugned order shows that the amendment has been declined merely on the ground that the same cannot be allowed after framing of the issues. I find that the learned trial Court while passing of the impugned order has adopted a hyper technical approach. It is the settled proposition of law that proviso to order VI Rule 17 CPC incorporated by way of amendment nowhere restricts the power of the Court to allow amendment in case it comes to the conclusion that the amendment sought is necessary to decide the dispute between the parties. More than that, it is the settled proposition of law that the rules of procedure are only to govern the remedies and not the rights between the parties and the aforesaid view can also be derived from the judgment of the Hon'ble Supreme Court in Mahila Ramkali Devi and others Vs. Nandram (D) through LRs and others, 2015 (5) RCR (Civil) 562. Relevant para 20 of the said judgment is reproduced as under:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting malafide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.”

In view of what has been stated hereinabove, the impugned

order dated 05.01.2019, is hereby set aside. The revision petition is, thus, allowed thereby permitting the petitioner to amend her plaint as prayed for in her application filed before the learned First Appellate Court.

27.10.2022
monika

(HARKESH MANUJA)
JUDGE

<i>Whether reasoned/speaking?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>