

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-765-2022
Decided on : 12.07.2022

Jarnail Singh

..... Petitioner

Versus

Dalwara Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. J.S.Dhinder, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the order dated 25.10.2021 (Annexure P-1) passed by Civil Judge (Jr. Divn.) Moonak vide which an application moved by the respondent under Order 6 Rule 17 CPC for amendment of plaint in the suit for permanent injunction was allowed.

Learned counsel for the petitioner inter alia contends that the trial Court fell into error while passing the impugned order as the application under Order 6 Rule 17 read with Order 1 Rule 10 and Section 151 CPC was moved by the respondent-plaintiff at a highly belated stage. The addition of the relief of recovery, which had been sought by way of application under Order 6 Rule 17 CPC and which had been allowed vide impugned order, had prejudiced the case of the petitioner, more so, since the claim of recovery was available to the respondent-plaintiff at the time of the institution of the suit. However, since the respondent-plaintiff had omitted to include the entire claim in his original plaint, he could not be allowed to

include such relinquished claim by way of an amendment of plaint as the same was barred under Order 2 Rule 2 CPC.

Heard learned counsel and perused the relevant material available on record.

It would be apposite to reproduce Order 2 Rule 2 CPC before proceeding further, which is as under:

“2. **Suit to include the whole claim-** (1) *Every suit shall include the whole of the claim, which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

(2) **Relinquishment of part of claim-** *Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

(3) **Omission to sue for one of several reliefs-** *A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.*

Explanation - For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

The prime object behind the aforementioned provision of law is

to check multiplicity of proceedings. A person cannot be permitted to split his cause of action into segments and bring separate suits in respect of such segments, subject to the leave of the Court. It is founded on well established principles of law that a defendant cannot be allowed to be vexed twice for the same cause of action. Hence, a person should be diligent enough to include all his claims/reliefs arising from the same cause of action while filing a suit.

Following conditions are required to be satisfied for the operation of the bar as envisaged under Order 2 Rule 2 CPC:

- (i) the cause of action on which the previous suit was instituted, forms the foundation of the subsequent suit (i.e. same cause of action in both the suits).
- (ii) the plaintiff claiming the relief in the subsequent suit could have sought it in the earlier suit as well.
- (iii) the parties in both the suits are the same.

Adverting to the case in hand, the bar as envisaged under Order 2 Rule 2 CPC, however, would not apply to this case as the claim of recovery has been sought to be added in the same suit and not claimed by way of subsequent suit. Still further, it is a matter of record that the trial in the instant case had not even commenced when the application for amendment of the plaint was moved. In the circumstances, the application was rightly allowed for the just and effective adjudication of the dispute between the parties. The submissions made by learned counsel for the petitioner that the amendment had prejudiced the case of the petitioner is

without any merit. Rather the amendment which has been allowed vide the impugned order would prevent multiplicity of proceedings between the parties and the dispute would be finally put to rest in the civil suit in question.

As a sequel to above, this Court is not inclined to interfere with the order passed by the Court below. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

12.07.2022
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No