

CR-4912-2022 (O&M)
Date of decision-14.11.2022

Baldev Raj and another

...Petitioners

Vs.

Sangeeta Rani

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJPresent: Mr. Sandeep Kumar, Advocate,
for the petitioners.Mr. Akshay Chadha, Advocate,
for the respondent.

MANOJ BAJAJ, J.

Petitioners-defendants have filed this revision petition to challenge the order dated 25.08.2022 (Annexure P-10) as well as the order dated 28.09.2022 (Annexure P-15), passed in Civil Suit No.CS/42853 of 2013 by Civil Judge (Junior Division), Ludhiana, whereby firstly, the application filed by the plaintiff-respondent for amendment of plaint was allowed with costs of Rs.4000/- and subsequently, the order dated 15.09.2022, whereby the amended plaint was discarded for non-payment of costs was recalled by imposing further costs of Rs.6000/-.

Learned counsel for the petitioners has argued that previously, respondent-Sangeeta Rani had filed an eviction petition under Section 13 East Punjab Urban Rent Restriction Act, 1949 against petitioner No.2-

Neelam which was withdrawn by her on 05.11.2011 with liberty to file a regular suit and she instituted the suit for possession on the same day. He submits that in the suit, plaintiff claims title of the property through sale deed dated 2.3.2007 executed by the defendant in her favour, which is being contested by filing written statement dated 20.03.2012. He submits that the plaintiff initially sought amendment of plaint in order to add the pleadings regarding her personal need of the suit property and the same was allowed on 16.08.2016. Now, through the impugned order dated 25.08.2022 passed by Civil Judge (Jr. Division), Ludhiana, the second application for amendment of plaint to add claim of mesne profits @ Rs.7000/- per month has been accepted. He submits that in the original plaint, she had only claimed an amount of Rs.77,000/- towards mesne profits and with this amendment at a belated stage, i.e. after a period of 10 years, the plaintiff has changed the nature of suit by materially altering the prayer clause also, therefore, the impugned order is not sustainable.

In support of his case, learned counsel has relied upon decisions of Hon'ble Supreme Court in **Pandit Malhari Mahale Vs. Monika Pandit Mahale and others, 2020 (11) SCC 549** and **J. Samuel and others Vs. Gattu Mahesh and others, 2012(110) AIC 24** and a decision of this Court in **Harminster Singh Vs. Ashok Kumar and others, 2020 (2) PLR 717.**

After hearing the learned counsel for the petitioners and considering the material on record, this Court finds that in para 9 of the original plaint, plaintiff has made specific averments claiming mesne profits @ Rs.7,000/- per month and the prayer clause also refers to recovery of

Rs.77,000/- towards compensation/use and occupation/mesne profits, thus, it is clear that amendment in the prayer clause rests on the averments contained in para 9 of the original plaint, and, it cannot be said that the plaintiff's claim is belated. Apart from it, the nature of the amendment sought to be incorporated in the plaint does not at all alter the basic structure of the suit, much less the pleadings or cause of action. Consequently, this Court has no hesitation in holding that the amendment sought by the plaintiff is formal in nature, and it does not cause any prejudice to the defendants.

Learned counsel has not raised any argument to question the impugned order dated 28.9.2022, recalling the order dated 15.09.2022, whereby amended plaint was discarded for non-payment of costs.

The decisions relied upon by learned counsel for the petitioners are not helpful because these decisions relate to the material alteration and amendment in the body of the suit, whereas in the present case, the plaintiff has not sought any amendment of the pleadings and concededly, the averment relating to the mesne profits @ Rs.7000/- per months is already contained in para 9 of the plaint.

Thus, in view of the above discussion, this Court does not find any illegality or impropriety in the impugned order passed by the trial Court.

Dismissed.

(MANOJ BAJAJ)
JUDGE

14.11.2022

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No