

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

(103)

CR No.3796 of 2022 (O&M)

Date of Decision : 20.03.2023

Brahm Prakash

...Petitioner

Versus

Dharam Chand and another

...Respondents

AND

CR No.3371 of 2022 (O&M)

Brahm Prakash

...Petitioner

Versus

Dharam Chand and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Verma, Advocate for the petitioner.

Mr. Aditya Jain, Advocate
for the respondents.

Harsimran Singh Sethi J. (Oral)

CM No.10388-CII of 2022 and

CM No.11632-CII of 2022

Applications are allowed as prayed for.

CR Nos.3796 and 3371 of 2022

This order shall dispose of the abovementioned two Civil Revision petitions, which have arisen from the impugned order dated 02.04.2022, copy of which has been appended as Annexure P-9 by which the plea of the petitioner-appellant seeking amendment in the plaint so as to seek alternate relief of possession and also amendment in the grounds of appeal, has been declined by the trial Court.

Learned counsel for the petitioner-appellant argues that the petitioner-plaintiff had filed a suit for permanent injunction claiming himself to be the owner in possession of the land projected in the heading of the suit and the said suit was rejected by the trial Court vide Order dated 13.09.2017. One of the grounds taken by the trial Court for dis-allowing the relief was that the consequential relief of possession has not been sought.

Against the judgment and decree of the trial Court dated 13.09.2017, appeal was preferred by the petitioner, which is still pending for adjudication. During the pendency of the said appeal, the petitioner-appellant filed two applications. First application was for seeking amendment in the prayer clause of the plaint so as to seek alternate relief of possession and second application was filed for suitably amending the grounds of appeal. The said applications have been dis-allowed by the Lower Appellate Court vide order dated 02.04.2022, which order is under challenge in the present Civil Revision petitions.

Learned counsel for the petitioner-appellant submits that the ground taken by the lower Appellate Court is that there is no provision under law to allow the amendment in the plaint at the appellate stage and further, the amendment if allowed, should not cause prejudice to the defendants.

Learned counsel argues that as per the Appellate Court if the prayer clause and the grounds of appeal are amended, the same will cause prejudice to the defendants, which is incorrect, as the appeal is to be decided on merits and only amendment sought is in the relief clause of the plaint and the grounds of appeal and the said amendment will not change the nature of the suit or the appeal, which is pending consideration before the Lower Appellate Court as the

evidence has already been led by the parties and the appeal will be decided on the basis of facts and evidence already on record.

Learned counsel for the respondents-defendants argues that the petitioner should have been vigilant to incorporate the prayer of possession keeping in view written statement filed by the defendants and as the petitioner-appellant failed to suitably amend the plaint at the relevant stage in the appeal, the said amendment should not be allowed as the same will delay the proceedings and the said delay will cause prejudice to the defendants.

I have heard learned counsel for the parties and have gone through the record of the case with their able assistance.

It is a conceded position between the parties that the appeal preferred by the petitioner-appellant against the judgment and decree of the trial Court dated 13.09.2017 is still pending consideration. Now, the question which arise is whether even at the appellate stage, the amendment in the plaint can be allowed in view of the facts and circumstances of the present case or not. The only amendment sought is for the amendment of the prayer clause and the grounds of appeal. Amendment sought will not change the nature of the suit but will only remove technical objections. No prejudice likely to be suffered has been brought to the notice of this Court.

Once the assertion has been made by learned counsel for the petitioner that the appeal will be decided on the basis of facts and evidence already on record, the prayer for amendment in the plaint as well as the amendment in the grounds of appeal will not cause prejudice to the defendants except there is delay for which they can be suitably compensated.

Keeping in view the above, the impugned order dated 02.04.2022 is set aside and the applications filed by the petitioner seeking amendment in the

prayer clause of the plaint as well as amendment in the grounds of appeal are allowed with all just exceptions. In order to compensate the prejudice, which has been caused to the defendants qua delay in finalization of the suit, as undertaken by learned counsel for the petitioner, the present petitions are allowed subject to payment of ₹25,000/- as costs to the respondents herein.

A photocopy of this order be placed on the file of connected case.

CM No.3716-CII of 2023 and
CM No.3715-CII of 2023

Applications are disposed of accordingly.

March 20, 2023

jt

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No