

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

CR-5000-2019 (O&M)

Date of decision : 17.01.2023

Buta Singh & Anr.

... Petitioner(s)

Versus

Basant Singh

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashish Gupta, Advocate for the petitioners.

Mr. N.K. Manchanda, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

The present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 23.05.2019 (Annexure P-9) dismissing the application for amendment of the plaint.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners claimed that they are owners in possession of one house measuring 18 ½ marlas which was purchased by them vide sale deed dated 18.01.2019 for an amount of Rs.10,25,010/-. It was further claimed that the house has a common passage/*rasta* measuring 12' x 50'. On the left side of the *rasta* is the house of defendant-respondent. It was pleaded that the defendant-respondent tried to forcibly block the *rasta* and hence a suit for permanent injunction was filed on 09.01.2019. After the filing of the suit, a wall was erected. After the erection of the wall by the defendant-respondent, complaints (Annexure P3 and P4) were sent to the authorities qua the

encroachment on the public path. Subsequently, prior to the filing of the written statement, an application for amendment of the plaint was filed for converting the suit into one for mandatory injunction in view of the fact that after the filing of the suit there had been alleged encroachment on the *rasta*. The application for amendment of the plaint was only to include the fact that the defendant-respondent had illegally encroached upon the *rasta* as also for amendment in the prayer clause seeking relief for mandatory injunction. The said application was contested by the defendant-respondent. Vide the impugned order the said application was dismissed on the ground that in case there was any construction raised by the defendant-respondent, the plaintiff-petitioner would be required to file a fresh suit.

Learned counsel for the plaintiff-petitioners has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sampath Kumar Vs. Ayyakannu & Anr. [2002 (4) RCR (Civil) 566]** to contend that when the basic structure of the suit was not being altered and only what was sought to be changed is the nature of the relief, the amendment ought to have been allowed especially keeping in view the fact that the same was being made at the very initial stage.

Per contra, learned counsel for the defendant-respondent has vehemently contended that the amendment would change the nature of the suit and hence it has rightly been dismissed.

Heard.

In the present case the short point involved is whether it is permissible to convert the suit by way of the amendment from one for permanent injunction to a suit for mandatory injunction. The intervening

circumstances i.e. the alleged encroachment of the path after the filing of the suit, led to the filing of the application for amendment. The basic structure of the suit is not being altered, however, what is being sought to be altered is the prayer in the suit from permanent injunction to one for mandatory injunction. It would always be open to the plaintiff-petitioner to file a fresh suit. Once it is open for the plaintiff-petitioner to file a fresh suit, there would be no reason to deny the incorporation of the said prayer in the present suit.

Hon'ble the Supreme Court in the case of **Sampath Kumar** (supra) has held as under :

“5. The short question arising for decision is whether it is permissible to convert through amendment a suit merely for permanent prohibitory injunction into a suit for declaration of title and recovery of possession.

6. It is true that the plaintiff on the averments made in the application for amendment proposes to introduce a cause of action which has arisen to the plaintiff during the pendency of the suit. According to the defendant the averments made in the application for amendment are factually incorrect and the defendant was not in possession of the property since before the institution of the suit itself.

7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's

revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.”

In view of the above and keeping in view the law laid down by Hon’ble Supreme Court, the revision petition is allowed. The impugned order is set aside and the amendment application stands allowed accordingly. Pending applications, if any, in the revision petition also stand disposed off.

Any observations made herein shall not be treated as an expression of opinion on the merits of the case.

17.01.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO