



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136

CR-4257-2024

Date of decision : 01.08.2024

Harvinder Singh

..... Petitioner

versus

Kamaljit Singh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sarju Puri, Advocate
for the petitioner.

PANKAJ JAIN, J. (Oral)

1. Defendant is in revision impugning order dated 02.05.2024 Annexure P-1 passed by Civil Judge (Jr. Divn.), Ludhiana whereby application filed by the plaintiff-respondent No.1 under Order 6 Rule 17 seeking amendment of the plaint has been allowed.

2. Plaintiff filed suit seeking decree of permanent injunction restraining defendants from dispossessing plaintiff from the suit property as detailed in the head note of the plaint. By way of application under Order 6 Rule 17, plaintiff incorporated history of lis between the parties.

The precise amendment prayed for reads as under:-

i) Civil Suit No. 2775 of 2017, titled "Harvinder Singh versus Kamaljit Singh" pending in the court of Shri Gagandeep Singh, Civil Judge (Junior Division), Ludhiana and fixed for 26.11.2021.

ii) Civil Suit No. 2954 of 2017, titled "Kamaljit Singh Versus Harvinder Singh" pending in the court of Shri Gagandeep Singh, Civil Judge (Junior Division), Ludhiana and fixed for 26.11.2021.



iii) Civil Suit titled "Kamaljit Singh Versus Satnam Singh and others" since withdrawn.

iv) Application for restoration of suit titled "Kamaljit Singh versus Sukhwinder Singh" being CM No. 475 of 2019, which is pending in the court of Shri Gagandeep Singh, Civil Judge (Junior Division), Ludhiana.”

3. The aforesaid amendment has been allowed by way of impugned order. Learned counsel for the petitioner while assailing the impugned order brings to the notice of the Court that the order has been passed without application of mind, in so much so the Court erred even with respect to the nature of the suit filed by the plaintiff. Reference has been made to para 4 of the impugned order. He further contends that amendment has been filed in order to cure defect in the plaint as the plaintiff having failed to disclose details of previous litigation between the parties, the plaint was defective as per the requirement of Order 7 Rule 1.

4. However on being asked, Mr. Puri very fairly concedes that so far as the stage of the suit is concerned, issues are yet to be framed.

5. I have heard counsel for the petitioner and have carefully gone through the records of the case.

6. Order 23 of the Code of Civil Procedure deals with withdrawal and adjustment of the suits which reads as under:-

“1. Withdrawal of suit or abandonment of part of claim-

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim. Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any



part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. (4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or (b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be preclude from instituting any fresh suit in respect of such subject-matter or such part of the claim.

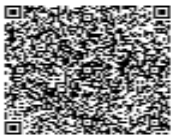
(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.”



6. Trite it is that a defect affecting the merits of the case or a defect which goes to the route of the suit cannot be said to be a formal defect as those in non-joinder of necessary parties, omission to substitute legal representatives, omission to include all the cause of action in the plaint and the necessary pleadings etc. Where a Court is satisfied that a suit must fail by reason of some formal defect, it may grant permission to withdraw such suit. In the present case, petitioner claims that there is a defect in the suit filed by the plaintiff for which it is bound to fail. After defendants filed application under Section 10 of CPC, the present application under Order 6 Rule 17 was filed, which stands allowed by the Trial Court. The basic objective behind Order 6 Rule 17 is that in order to adjudicate merits of the case, the Court may allow amendment in the pleadings which may be necessary for determining the real question in controversy between the parties, provided that it does not cause injustice or prejudice to the opposite party. Thus, the main issues that the Court must consider while allowing amendment in the pleadings is:-

- (i) whether the same is necessary for determining of the real question of controversy; and
- (ii) whether the amendment is to the peril of the opposite party.

7. Hon'ble Supreme Court in the case of ***Ganga Bai vs. Vijay Kumar and others*** reported as **1974 (2) SCC 393** held that power to allow amendment is undoubtedly wide. In the present case, since the amendment has been moved to cure the formal defect and for that the plaintiff can even maintain fresh suit by withdrawing the instant one, this Court finds that no prejudice will be caused to the petitioner and the defect can be remedied by allowing the amendment of the pleadings.



8. As observed by Supreme Court in *Pasupuleti Venkateswarlu vs. Motor and General Traders*, reported as *1975(1) SCC 770*, procedure is handmaid and not mistress of justice. The suit is at preliminary stage. Even issues are yet to be framed. Thus, it is in the interest of justice that the amendment has been allowed by the Trial Court.
9. Finding no merits in the present case, the same is dismissed.
10. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

01.08.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No