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

CR-3464-2024 (O&M)

Date of Decision : 23.05.2025

Surinder Singh & Ors

... Petitioner(s)

Versus

Kharaiti Lal Chauhan (deceased) through LR's & Ors

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Harsh Mehla, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed challenging the impugned order dated 08.05.2024 (Annexure P-1) vide which an application filed by the plaintiff-petitioners under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-petitioners herein filed a suit for redemption of the mortgage alleged to have been executed by the plaintiff-petitioners in favour of the defendant-respondent No.1. It was stated in the plaint that the plaintiff-petitioners had deposited the mortgage money of ₹1,500/- in favour of the legal heirs of the defendant-respondent No.1 on 05.07.2016. When the matter was fixed for arguments, the present application was filed under Order 6 Rule 17 of CPC for amendment of the plaint seeking to add a prayer in the plaint that the plaintiff-petitioners would be entitled to *mesne* profits @ ₹15,000/- per month w.e.f. 05.07.2016 till the date of delivery of handing over possession and for

adding a new para 6A. Reply was filed to the said application and vide the impugned order dated 08.05.2024 the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the plaintiff-petitioners would contend that he only presses for the amendment to the prayer clause and does not wish to press the amendment qua adding para 6A in the plaint. It is further the contention of the learned counsel that in case the plaintiff-petitioners are not allowed to amend the suit, they would be deprived of their right to claim *mesne* profits as the second suit qua the same would be barred by the principles of Order 2 Rule 2 of CPC. In support of his contentions, he has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Abdul Rehman & Anr. Vs. Mohd. Ruldu & Ors. [(2012) 11 SCC 341]** and **G. Nagamma & Anr. Vs. Siromanamma & Anr. [(1996) 2 SCC 25]**.

4. I have heard the learned counsel for the plaintiff-petitioners.

5. In the present case, the suit was filed for possession by way of redemption of two shops. Written statement was filed and issues were framed. Thereafter, both the parties led their evidence and at the very fag end of the trial, the present application was filed for amendment of the plaint. Though at this stage the learned counsel for the plaintiff-petitioners has restricted his prayer to the amendment of the prayer clause, however, the said amendment also cannot be allowed. It is not a case where the plaintiff-petitioners were not aware that if they had already deposited the mortgage amount, they would be entitled to the *mesne* profits. The application which has been filed for amendment only states that during the file inspection, it was found that the mortgage amount had been deposited and that the possession of the defendant-

respondents had become illegal and, hence, the plaintiff-petitioners were entitled to *mesne* profits. A perusal of the plaint itself shows that in para 5 of the plaint it has been averred by the plaintiff-petitioners that they had deposited the amount of mortgage money of ₹1,500/- in the name of the defendant-respondent No.1. That being so, the prayer for *mesne* profits, if any, ought to have been made at the time of filing of the suit.

6. The argument of the learned counsel for the plaintiff-petitioners that no further evidence would be required to be led and, therefore, the amendment in the prayer clause ought to be allowed cannot be accepted inasmuch as since there was no prayer for *mesne* profits, though the petitioners may have led their evidence in that regard, the defendant-respondents cannot now be taken by surprise and be left remediless i.e. not permitted to lead any evidence in this regard. In case the amendment is allowed at this stage it would amount to a *de novo* trial as an issue would have to be framed regarding *mesne* profits and the defendant-respondents would have to be permitted to lead evidence.

7. The judgment relied upon by the learned counsel in the case of **Abdul Rehman's** (supra) would not come to his aid inasmuch as in the said judgment it has been held that the Courts must have a liberal approach in accepting an amendment made prior to the commencement of the trial. However, if such an application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial. In para 13 their Lordships has held as under :

“13) Next, we have to see whether the proposed

amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.”

8. In the present case, no parity can be drawn to the facts of the case in **Abdul Rehman** (supra) inasmuch as there is no factual basis for the amendment in the plaint.

9. The reliance by the learned counsel for the plaintiff-petitioners in the case of **G. Nagamma** (supra) would also not come to his aid as the same

relates alternative reliefs or inconsistent pleas.

10. As discussed above, the amendment at this stage would amount to a *de novo* trial which cannot be permitted. In view thereof, I do not find any merit in the present revision petition. The same being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

11. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

23.05.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

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