

COURT OF CIVIL JUDGE (J.D.) /F.T.C., HAMIRPUR

O.S. No. : 238/2018

Mulayam Singh vs Ranvijay Singh and others

10.11.2021

Plaintiff has moved application 45A1 along with affidavit 46C2 under Order VI, rule 17 CPC seeking permission to amend the plaint.

Plaintiff has moved application 45A1 stating that the plaintiff has filed this suit for injunction against defendants and due to typographical error some necessary facts related to the description of disputed property as well as relief of non-interference by defendants in the peaceful possession of plaintiff in the disputed property have not been incorporated in the plaint. Plaintiff has sought permission to incorporate such necessary amendments in his plaint.

Defendants have opposed the Plaintiff's application 45A1 by filing their objections vide 47C2. The stand of the Defendant is that the Plaintiff's application is against law and facts as the subject matter of the original suit was the crop on the disputed property which has already been reaped by the plaintiff and thus the cause of action no longer survives and this renders the present amendment application futile. The Defendant has sought rejection of the plaintiff's amendment application for the above reasons

Heard learned counsels of Plaintiff and Defendants. Perused the record.

It is noteworthy that in the present case, through application 45A1, the plaintiff seeks permission to amend his plaint to incorporate exact description of disputed property and an addition to the relief of injunction that were left out due to typographical errors. As per established law, the refusal of the court to amend pleading cannot be on account of any mistake, negligence, carelessness or even violation of the rules of procedure on part of the Defendant. The approach of the Court should be liberal with regard to the application for amendment, especially where the damage caused to the opposite party can be compensated through costs.

Hon'ble Supreme Court in Civil Appeal No. 2431 of 2019 (Arising out of S.L.P (C) No. 2792 of 2019) **Varun Pahwa versus Mrs. Renu Chaudhary** held that, "*The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.*"

And in the case of **Sampath Kumar Vs. Ayyakannu, AIR 2002 SC 3369**, The question whether it is, it has been held by the Honorable Supreme Court that it was permissible under Order 6, rule 17 CPC to convert through an amendment a suit filed for permanent prohibitory injunction into a suit for declaration of title and recovery of possession as what was sought to be changed by way of amendment was the nature of relief prayed for by the plaintiff and not the basic structure of the suit.

Hon'ble Allahabad High Court in **State Of U.P. & Others vs Ashok Kumar** Second Appeal No. - 536 of 2007 held that, "*The whole object and purpose of introduction of Order 6 Rule 17 C.P.C. is to avoid multiplicity of proceeding and/or to shorten the litigation and to settle the entire dispute at rest, thus, keeping in view the expression "at any stage of the proceedings" employed in Order 6, Rule. 17, CPC, the Court is competent to deal with the*

application for amendment as it keeps seisin over the case till the controversy is not decided at any point of time even at the stage of second appeal in spite of the fact that the said pleas are available at trial stage.

Further, the expression "at any stage of the proceedings" is elastic and not circumscribed or limited by any condition, the Legislature in its wisdom had left the same very wide open without imposing any kind of limitation to its elasticity. If it is necessary for the purpose of determining the real question in controversy then it may be allowed."

The proposed amendments neither change the nature of the suit nor introduce any new cause of action, and are being introduced before the commencement of trial. In so far as the damage caused to the Defendants due to the delay caused, it can be compensated through costs. Therefore in light of the above discussion and established law and to avoid multiplicity of proceedings, the application 45A1 ought to be allowed in the interests of justice.

Order

The amendment application 45A1 is allowed at the cost of Rs 200/- payable by the Plaintiff to the Defendants. The Plaintiff is directed to carry out the said amendments in the plaint within a week. File fixed for additional written statement on 26/11/2021.

Date: 10.11.2021

**Civil Judge (J.D.)/F.T.C.,
Hamirpur**