

Before R. N. Mittal, J.

DARBARA SINGH,—Petitioner.

versus

AKHSHAYA KUMAR JULKA,—Respondent.

Civil Revision No. 282 of 1983.

March 16, 1983.

*Code of Civil Procedure (V of 1908)—Order 2 Rule 2(3) and Order 6 Rule 17—Suit instituted for possession—Plaintiff subsequently filing application for an amendment for introducing claim for damages for use and occupation—Amendment application—Whether hit by the provisions of Order 2 Rule 2(3)—Said rule—Whether applicable to applications for amendment under Order 6 Rule 17.*

Held, that from a reading of Order 2, Rule 2(3), of the Code of Civil Procedure 1908 it is evident that if a plaintiff is entitled to only one relief with regard to a cause of action he is required to file a suit for whole of the relief and if he is entitled to more than one relief, he is required to file a suit for all the reliefs together. In case he does not sue due to inadvertance or otherwise for a part of the claim or any of the reliefs, he is barred to claim the same in a subsequent suit. The said rule, however, does not forbid that the plaintiff who claims a part of the relief or one of the reliefs cannot introduce that claim by way of amendment. The question whether an amendment by which a plaintiff wants to introduce a part of the relief or one of the reliefs should be allowed or not is to be determined by taking into consideration the provisions of Order 6 Rule 17 of the Code. In this view of the matter, an application for amendment of the plaint cannot be dismissed on the ground that it was barred under Order 2 Rule 2(3) as the said rule is not applicable to the applications for amendment. (Para 3).

*Petition Under Section 115 C.P.C. for the revision of the order of Shri R. G. Ahluwalia, Sub-Judge, Ludhiana, dated 9th December, 1982, allowing the request of the plaintiff for making the amendment in the name of the defendant in the plaint subject to payment of Rs. 50/- as costs and disallowing the amendment as far as proposed amendment to include claim for recovery of Rs. 7,200/- on account of use and occupation at a month rate of Rs. 200/-.*

Y. P. Gandhi, Advocate, for the Petitioner.

B. N. Aggarwal, Advocate, for the Respondent.

Darbara Singh v. Akshaya Kumar Julka (R. N. Mittal, J.)

## JUDGMENT

*Rajendra Nath Mittal, J. (Oral)*

(1) This revision petition has been filed against the order of the Subordinate Judge 1st Class, Ludhiana, dated 9th December, 1982, partly disallowing the application of the plaintiff for amendment of the plaint.

(2) Briefly, the facts are that the plaintiff instituted a suit for possession of the property in dispute against the defendant *inter alia* on the ground that he allowed the defendant to occupy the property for a few days only but he did not vacate it. Later, he filed an application under Order 6 rule 17, Civil Procedure Code; for amendment of the plaint and sought two amendments; first, the correction of the name of the defendant and second, introduction of a claim of Rs. 7,200 on account of damage for use and occupation for three years prior to the date of filing the suit. The application was contested by the defendant in respect of the latter but not the former amendment. With regard to the latter amendment, he *inter alia* pleaded that it was barred by the provisions of Order 2, rule 2, Civil Procedure Code. The learned Subordinate Judge allowed the first amendment on payment of Rs. 50 as costs while he disallowed the second amendment on the ground that it was barred under Order 2, rule 2(3) of the Code.

(3) The learned counsel for the petitioner submits that Order 2, rule 2 applies if a claim, which could be made in the earlier suit, is not made there but is made in the subsequent suit, and not to the claim sought to be introduced by way of amendment. In order to determine the question it is advantageous to read Order 2, Rule 2, Code of Civil Procedure, which is as follows:—

2. Suit to include the whole claim.—(i) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.....
- (2) Relinquishment of part of claim.—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

- (3) Omission to sue for one of several reliefs.—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation—

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From a reading of the rule, it is evident that if a plaintiff is entitled to only one relief with regard to a cause of action, he is required to file a suit for whole of the relief and if he is entitled to more than one relief, he is required to file a suit for all the reliefs together. In case he does not sue due to inadvertence or otherwise for a part of the claim or any of the reliefs, he is barred to claim the same in a subsequent suit. The rule is based on the principle that a defendant should not be vexed twice for the same cause of action. It does not forbid that the plaintiff who claims a part of the relief or one of the reliefs cannot introduce that claim by way of amendment. The question whether an amendment by which a plaintiff wants to introduce a part of the relief or one of the reliefs should be allowed or not is to be determined by taking into consideration the provisions of Order 6 Rule 17 of the Code. The trial Court erroneously dismissed the application for amendment on the ground that it was barred under Order 2, Rule 2(3), which is not applicable to the application for amendments. The trial Court has thus acted with material irregularity in exercise of its jurisdiction and its order is liable to be set aside.

(4) For the aforesaid reasons, I accept the revision petition, set aside the order of the trial Court and remand the case to it for deciding the application relating to the prayer for introduction of claim of Rs. 7,200 on merits. The costs in the revision petition shall be the costs in the cause. The parties are directed to appear before the trial Court on 6th April, 1983.

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H. S. B.