

CR-1062-2022 (O&M);
CR-1061-2022 (O&M) and
CR-2141-2022 (O&M)

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2026:PHHC:003992



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

(279)

1. CR-1062-2022 (O&M)
RajraniPetitioner
Versus
Nikhil minor through Subhash Chander as next friend and others
.....Respondents
2. CR-1061-2022 (O&M)
RajraniPetitioner
Versus
Nikhil minor through Subhash Chander as next friend and others
.....Respondents
3. CR-2141-2022 (O&M)
DharambirPetitioner
Versus
Nikhil minor through Subhash Chander as next friend and others
.....Respondents

Date of decision:-14.01.2026

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Ajay Jain, Advocate,
for the petitioner in CR-1061-2022 and
CR-1062-2022.

Mr. Ravi Ambawata, Advocate
for Mr. Sanjay Mittal, Advocate
for the petitioner in CR-2141-2022.

Mr. Mani Ram Verma, Advocate, and
Mr. Nipun Verma, Advocate
for respondent No.1.

VIKAS BAHL, J. (ORAL)

INDEX

	Paras	Pages
Background of the case	1-2	2-3
Brief facts of the case	3-8	3-7
Arguments on behalf of the petitioners in CR-1061-2022 and CR-2141-2022	9	7
Arguments on behalf of respondent No.1 in CR-1061-2022 and CR-2141-2022	10	7-8
Analysis and Findings in CR-1061-2022 and CR-2141-2022	11-18	8-13
Arguments on behalf of the petitioners in CR-1062-2022	19	13-14
Arguments on behalf of respondent No.1 in CR-1062-2022	20	14
Analysis and Findings in CR-1062-2022	21-26	14-17

BACKGROUND OF THE CASE

1. This order would dispose of three revision petitions. The first petition bearing CR-1062-2022 has been filed by the petitioner/defendant No.1-Rajrani challenging the order dated 03.02.2022 passed by the trial Court vide which the application filed by the defendant No.1/petitioner under Order 7 Rule 11 CPC read with Section 151 CPC seeking rejection of the plaint has been dismissed. The second petition bearing CR-1061-2022 has been filed by defendant No.1-Rajrani, in which the contesting respondent is respondent No.1-Nikhil minor son of Shri Krishan Yadav

through Subhash Chander as next friend (plaintiff). The challenge in the said petition is to the order dated 03.02.2022 passed by the trial Court vide which the application filed under Section 153 read with Order 6 Rule 17 CPC by plaintiff-respondent No.1 has been allowed. The third petition i.e. CR-2141-2022 has been filed by defendant No.2 challenging the same order dated 03.02.2022 vide which the amendment application under Order 6 Rule 17 read with Section 153 CPC has been allowed.

2. With the consent of the parties, CR-1062-2022 has been taken up as the lead case and the documents have been referred to from the said revision petition, unless it has been specifically stated that the document is being referred to from a different revision petition.

BRIEF FACTS OF THE CASE

3. The brief facts of the present case are that Subhash Chander had filed a suit for permanent injunction and mandatory injunction against six defendants which included Rajrani (defendant No.1-petitioner in CR-1061-2022) and Dharambir (defendant No.2-petitioner in CR-2141-2022). The plea raised in the said suit was that the plaintiff was the owner of land in question measuring 12 kanals and 19 marlas and that the defendants had encroached upon the suit land. The said suit was filed on 27.12.2021. On 31.12.2021, an application was filed by defendant No.1 under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint on the grounds that the plaintiff had no right left in the suit land and that the plaint was undervalued.

4. In the reply filed to the said application under Order 7 Rule 11 CPC, it was stated by the plaintiff that prior to the filing of the application under Order 7 Rule 11 CPC, the plaintiff had filed an application under Section 153 read with Order 6 Rule 17 CPC to amend the defect and error in the title of the plaint. It was further stated in the reply to the application under Order 7 Rule 11 CPC that the suit had been filed for injunction and also for removal of encroachment from the land comprised in Rectangle No.118, Killa No.6/1, 7/1, therefore, as per Haryana Act No.11 of 1974 after amendment in Clause V, the court fee is required to be paid on the valuation of Rs.50/- per acre and that the plaintiff had already paid the requisite court fee of Rs.50/-. Para 4 of the preliminary objections of the reply to the application under Order 7 Rule 11 CPC is reproduced as under:-

“4. That the present suit has been filed for removal of encroachment from the land comprised in Rect No. 118, Killa No. 6/1, 7/1, therefore, as per Haryana Act No. 11 of 1974 after amendment in Clause V, the court fee is required to be paid on the valuation of Rs. 50/- per acre and accordingly the value of the suit property is not more than Rs. 10/- and the plaintiff has already paid court fee of Rs. 50/- over the plaint, therefore, this application deserves dismissal with heavy costs.”

5. On 31.12.2021 itself, as has been stated in the reply to the application under Order 7 Rule 11 CPC, the plaintiff had filed an application under Order 6 Rule 17 read with Section 153 CPC to amend the defect and error in the title of the suit. It is the case of the plaintiff that the said amendment application was filed prior in time to the application under Order 7 Rule 11 CPC. A perusal of the said application, which has been annexed as Annexure P-4 along with CR-1062-2022, would show that it was stated therein that the said Subhash Chander had special love and affection for his

grandson Nikhil (minor) and the date of birth of Nikhil was 11.06.2006, regarding which the birth certificate was also attached and it was further stated that the said Subhash Chander had transferred the land detailed in para No.1(a) of the plaint in favour of his grandson Nikhil, who is a blood relative, vide registered release deed No.325 dated 19.04.2021 and the mutation No.37671 was also sanctioned on 08.06.2021 in his favour and that the parents of said Nikhil were not taking care of him and that the minor child was living with the said Subhash Chander. It was further stated that in the title of the suit, the name of Subhash Chander as plaintiff had been wrongly mentioned and in fact the title of the suit should have been Nikhil (minor) son of Shri Krishan Yadav through his next friend Subhash Chander which mistake was an inadvertent mistake and thus, a limited amendment to the said effect was sought. It was stated that the said amendment was necessary for the proper and final adjudication of the case and for deciding the real issue and that since the plaintiff was *dominus litis*, thus, he had a right to seek the said amendment.

6. It is not in dispute that neither written statement had been filed nor the issues had been framed on the date when the said application was filed. It has further been stated before this Court that even till date the written statement has not been filed and the issues have not been framed and the suit is at the initial stage.

7. The trial Court vide order dated 03.02.2022 allowed the application for amendment filed under Order 6 Rule 17 read with Section 153 CPC and while allowing the said amendment observed that it was not disputed that Nikhil (minor) was shown as the owner of the suit property

vide relinquishment deed bearing Vasika N.325 dated 12.04.2021 which was registered on 19.04.2021. It was further observed that Subhash Chander was the grandfather of Nikhil and the said aspect was also not disputed and that as per the provision of Order 32 Rule 1 CPC, a suit filed by a minor is to be instituted in his name through a person who is the next friend of the minor and any person who is of sound mind and has attained majority may act as the next friend or guardian and that Subhash Chander, who is the grandfather of the minor, was competent to be the next friend of his grandson Nikhil. It was further observed that as per the provision of Section 153 CPC, "the Court may at any time or on such terms as to the costs or otherwise as it may think fit, amend any defect or error in any proceedings in a suit and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceedings" and that keeping in view the said legal provision, the Court was of the opinion that for determining and protecting the rights of the minor, the amendment was very necessary and that since the case was at an initial stage, so no serious prejudice would be caused to the respondents. It is the said order which is the subject matter of challenge in CR-1061-2022 and CR-2141-2022.

8. The application filed under Order 7 Rule 11 CPC by the defendant No.1 was dismissed vide order dated 03.02.2022 and it was observed that the suit was a simpliciter suit for permanent injunction and mandatory injunction and thus, the plaintiff was not bound to pay the court fees on the basis of the market value of the suit property and that the suit was not undervalued. The other objections raised with respect to Subhash Chander having no right left was rejected in view of the amendment having

been allowed. The said order is the subject matter of challenge in CR-1062-2022.

ARGUMENTS ON BEHALF OF THE PETITIONERS IN CR-1061-2022 AND CR-2141-2022

9. Learned counsel appearing for the petitioners in CR-1061-2022 and CR-2141-2022 have argued that a perusal of the plaint would show that the suit was filed by Subhash Chander and not by the minor and in the pleadings also, it was stated that it is the said Subhash Chander (plaintiff) who was the owner of the suit property and it was after demarcation that the said plaintiff had asked the defendants several times to restore the property. It is submitted that in the plaint, the right of the minor was nowhere mentioned. It is further submitted that the amendment in the said circumstances could not have been allowed and the impugned order allowing the amendment is illegal and deserves to be set aside. It is stated that the entire nature of the suit is being changed as the plaintiff himself is being changed, which is not permissible. It is further stated that provision of Order 6 Rule 17 CPC cannot be invoked to change the name of the plaintiff.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1 IN CR-1061-2022 AND CR-2141-2022

10. Learned counsel for the respondent No.1, on the other hand, has submitted that it is not in dispute that Subhash Chander had transferred the property in favour of the minor grandson and thus, the minor grandson had a right to file a suit through his next friend. It is further submitted that the amendment is necessary for the proper and final adjudication of the case and has been rightly allowed as the suit was at an initial stage and even the written statement has not been filed by the defendants nor any issues have

been framed, thus, the trial has not commenced. It is submitted that once the minor has a right to file a fresh suit, the amendment would help in avoiding multiplicity of litigation and that the present revision petitions have been filed only in order to delay the proceedings. It is further submitted that the said Subhash Chander in pursuance of the order allowing the amendment has also filed an affidavit to the effect that Subhash Chander has no adverse interest against the minor Nikhil and a copy of the said affidavit dated 15.02.2022 has been handed over to the Court during the course of arguments and the same is taken on record and has been marked as “Mark A”. It is argued that it is within the powers of the Court to amend any defect or error in any proceedings in a suit and also to make necessary amendments and in the present facts and circumstances, the mentioned name of plaintiff was apparently a mistake which has been rightly rectified by the Court.

ANALYSIS AND FINDINGS IN CR-1061-2022 AND CR-2141-2022

11. This Court has heard learned counsel for the petitioners as well as learned counsel for respondent No.1 and is of the opinion that the order dated 03.02.2022 vide which the application for amendment under Order 6 Rule 17 CPC read with Section 153 CPC has been allowed, is in accordance with law and deserves to be upheld for the reasons detailed hereinafter.

12. It is not in dispute that the suit property was relinquished in favour of the minor Nikhil vide relinquishment deed dated 12.04.2021 which was registered on 19.04.2021 and thus, prior to the institution of the suit, the said minor Nikhil had become the owner of the property in question. The love and affection of grandfather Subhash Chander for the said minor Nikhil

is apparent from the fact that he had transferred the said property without consideration, which fact has not been disputed before this Court. It is further not in dispute that the stage at which the application for amendment was filed, even the written statement had not been filed by the defendants nor the issues had been framed and as has been stated before this Court, even till date the written statement has not been filed and the issues have not been framed and thus, the suit is at an initial stage. Since the minor Nikhil is admittedly the owner of the suit property, it cannot possibly be stated that the said Nikhil through his next friend cannot institute a suit. Thus, even a fresh suit on behalf of Nikhil minor through his next friend Subhash Chander could have been filed. In order to avoid multiplicity of litigation, the trial Court has rightly allowed the application and has rightly amended the title of the suit to “Nikhil minor through Subhash Chander as the next friend”. The said amendment/correction is necessary for the proper adjudication of the case as apparently after Subhash Chander had transferred the property by virtue of a registered deed in favour of his grandson, he is no longer the owner of the suit property and it is the minor Nikhil who is the owner of the suit property and it is the rights of the minor which have to be adjudicated in the case.

13. It is a matter of settled law that all amendments which are necessary for determining the real question in controversy should be allowed. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in the case of “**Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.**” reported as 2006(2) RCR (Civil) 577. The relevant portion of the said judgment is reproduced hereinbelow:-

“13. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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17. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

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Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar vs. Ayyakannu and Another, (2002) 7 SCC 559.

14. This Court is of the opinion that the amendment/correction made was necessary. Under Section 153 CPC, the Court has the power to amend any defect or error in any proceeding in a suit and all necessary amendments are required to be made for the purpose of determining the real question or issue raised by or depending on such proceeding. The provision of Section 153 CPC is reproduced herein below: -

“153. General power to amend. -- The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made of the purpose of determining the real question or issue raised by or depending on such proceeding.”

15. The above-said provision in the opinion of this Court, more so, in the peculiar facts and circumstances of the present case, would include the power to rectify an error or defect/or carry out necessary amendments in the title of the suit, including in the name of the plaintiff. A perusal of the plaint would show that it had been stated that the plaintiff is the owner of the land in question. It is not in dispute that on 27.12.2021 when the plaint was drafted it was Nikhil minor who was the owner of the suit property. It is the case of Subhash Chander in the application for amendment of the defect and error in the title of the plaint, that it was on account of an inadvertent mistake that instead of making Nikhil minor son of Shri Krishan Yadav through his next friend Subhash Chander the plaintiff, Subhash Chander has been shown as the plaintiff. The provision of Order 6 Rule 17 CPC is with respect to amendment of pleadings. It cannot be said that if there is any mistake in the headnote or in the mentioning of the name of the parties that the same cannot be amended or rectified by the Court or an application in the said regard cannot be moved by a party. There could be several cases where the names of the parties have been wrongly mentioned or the parties have been wrongly impleaded or the parentage/address of the parties have been wrongly given. It cannot be said that rectification of the said errors would not fall within the parameters of Section 153 CPC and Order 6 Rule 17 CPC. The duty of the Court is to determine the real question which arises

for adjudication and for the said purpose the Court has the power to permit all necessary amendments and to rectify defects/errors.

16. Moreover, at any rate, once the trial Court had exercised its jurisdiction and had allowed the amendment, this Court while exercising its powers under Article 227 of the Constitution of India, would not do injustice to the parties, more so, to the plaintiff by setting aside the said order. Since the issues have not been framed, the trial has not commenced, the case is at an initial stage and the minor has every right to file even a fresh suit, thus, in order to finally adjudicate the case and in order to avoid multiplicity of litigation, the application for amendment/curing the defect has been rightly allowed. The trial Court while passing the impugned order dated 03.02.2022 has also further rightly observed that Subhash Chander, who is the grandfather of the minor and who has relinquished the property in favour of the minor grandson, could be the next person through whom the suit could be filed by the minor, after taking into consideration the provision of Order 32 Rule 1 CPC. Moreover, the said Subhash Chander has already filed an affidavit dated 15.02.2022 before the trial Court (which has been taken on record and marked as "Mark A") stating that the said Subhash Chander has no adverse interest against the minor Nikhil. The fact that he had transferred the suit property in favour of Nikhil without consideration also establishes the said fact that he has no adverse interest against the minor.

17. The Hon'ble Supreme Court in the case of "**Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil**", **reported as (2010) 8 Supreme Court Cases 329**, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227

of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

18. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petitions i.e. CR-1061-2022 and CR-2141-2022, being meritless, deserve to be dismissed and are dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER IN CR-1062-2022

19. Learned counsel for the petitioner while challenging the order dated 03.02.2022 whereby an application under Order 7 Rule 11 CPC has been rejected, has submitted that in view of the dismissal of CR-1061-2022,

the surviving issue would be that the court fees on the basis of the market value of the suit property has not been affixed and thus, the suit is undervalued. It is submitted that a careful reading of the plaint would show that in fact the plaintiff is seeking possession of the property although he has filed a suit for permanent and mandatory injunction directing the defendants to remove the illegal encroachments. It is further submitted that since possession is being sought, thus, the Court fee required to be affixed by the plaintiff is as per the market value of the suit property.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1 IN CR-1062-2022

20. Learned counsel for the respondent No.1, on the other hand, has submitted that as per settled law, the defendants cannot sustain a revision on the issue of court fee as the same is an issue between the plaintiff and the Court and there is no prejudice caused to the defendants. It is further submitted that the present suit is a simpliciter suit for permanent injunction and mandatory injunction and as per Haryana Act No.11 of 1974 after amendment in Clause V, court fee is required to be paid on the valuation of Rs.50/- per acre and the correct fee has been paid/affixed. It is further submitted that in the application there is no reference made that any house or garden exists at the suit property.

ANALYSIS AND FINDINGS IN CR-1062-2022

21. It would be relevant to note that a Co-ordinate Bench of this Court in case titled as “**Arun Kumar Goyal Vs. Payal Aggarwal**, ***reported as 2013(4) R.C.R. (Civil) 93***, had observed that no revision would lie at the instance of the defendant against the decision on the question of inadequacy

of court fee as the question of non-payment of Court fee is a dispute between the litigant and the Registry. Reliance in the said judgment was placed upon various judgments. Paras No.9 and 10 of the said judgment are reproduced as under: -

*“9. Admittedly, the dispute is of the court fee. Learned counsel for the respondent before raising any argument on the merits of the case has raised a preliminary objection that no revision is maintainable in case of payment of court fee. It has been held in various judgments that the question of non-payment of court fee is a dispute between the litigant and Registry whether it arises at the stage of presentation of plaint or the appeal and the respondent is normally not interested in such a dispute. As per ratio of judgment in case titled **Shamsher Singh v. Rajinder Prashad, 1973 PLJ 686**, revision or appeal can be filed if there is a dispute of jurisdiction. In case the question of jurisdiction is not involved then revision cannot be filed. This issue was interpreted by the Kerala High Court in **Vasu v. Chakki Mani, AIR 1962 Kerala 84** wherein it was held that no revision will lie against the decision on the question of inadequacy of court fee at the instance of the defendant. The judgment of Apex Court in **Sri Rathnavarmarajas case (supra)** was also followed by the Full Bench of this Court in **M/s. Arjan Motors v. Girdhara Singh and others, 1978 PLJ 36**. As per Full Bench judgment of this Court it was held that question of court fee cannot be agitated by the litigants in a petition under section 115 of the Civil Procedure Code.*

*10. The present case is squarely covered by a judgment of Full Bench of this Court rendered in **M/s. Arjan Motors case (supra)**. Accordingly, in view of the facts as mentioned above and the settled position of law in case of payment of court fee, no revision is maintainable.*

Dismissed.

Revision Dismissed”

22. No contrary judgment has been cited on behalf of the petitioner.

In view of the above, the present revision petition filed by the petitioner raising the sole issue that adequate court fee has not been paid is held to be not maintainable.

23. It would be relevant to mention that the issue with respect to court fee has to be considered in the light of the arguments raised by both the parties and also after taking into consideration the provisions of Section 7(v), Sections 9 and 10 of the Court Fees Act, 1870. Even assuming the arguments of the petitioner/defendant No.1 is accepted on its face value to the effect that in effect the plaintiff is seeking possession, then also, as per the above-said provisions, it has to be determined as to whether the possession sought is with respect to land, house or garden as the Court fee for seeking possession of land is different from the court fee required to be affixed when possession of house or garden is sought.

24. A perusal of the plaint would show that the property in question is stated to be in revenue estate of Rewari and bears khasra number and thus, *prima facie* appears to be an agricultural land. However, all the said aspects require evidence to be led and thus an issue regarding the same is required to be framed and both the parties are required to be given the right to lead evidence regarding the same. It is not in dispute that the defendants are yet to file the written statement.

25. In view of the above, CR-1062 -2022 is disposed of with the following observations/directions: -

- (i) It would be open to the defendants to take a specific plea with respect to inadequacy of court fee in the written statement and in case any such plea is taken, then, an issue regarding the same would be framed by the trial Court in addition to the other issues which arise in the case.
- (ii) It would be open to all the parties to lead all evidence in support of the said issue along with the other issues and the trial Court would decide the said issue along with other issues at the stage of final arguments after taking into consideration the pleadings and evidence led by the parties, dehors the observations made in the impugned order with respect to the aspect of court fee.

26. Pending application(s), if any, stand disposed of in view of the above-said order.

January 14, 2026
naresh.k.

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes