

(2013) 08 P&H CK 0384

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 4866 of 2010 (O and M)

Nand Lal

APPELLANT

Vs

Bhoop Singh and Others

RESPONDENT

Date of Decision : 21-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0384

Hon'ble Judges : Rajan Gupta, J

Bench : Single Bench

Advocate : Jaivir Yadav, for the Appellant; Sanjay Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Gupta, J.—Present revision petition is directed against the order dated 1.5.2010, passed by the court below whereby application for amendment of written statement has been dismissed. Learned counsel for the petitioner has assailed the order. He submits that amendment sought by petitioner was necessary for just decision of the case. The court below has gravely erred in dismissing the same. He has placed reliance on judgment reported as Harbans Lal Vs. Dev Raj and Others

2. Learned counsel appearing for respondents has vehemently opposed the prayer. He submits that petitioner wants to withdraw an admission by way of amendment. According to him, suit was instituted way back in the year 2001 and written statement was filed on 7.5.2001. Defendant No. 4 had stated therein about the execution of registered gift-deed in favour of defendants No. 1 to 3. He had also pleaded that mutation was sanctioned on that basis. According to him, defendant No. 4 cannot withdraw the stand already taken. He has relied upon judgment reported as Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.,

3. I have heard learned counsel for the parties and given careful thought to the facts of the case.

4. Plaintiff Ramkala, who is daughter of petitioner, filed a suit for declaration to the effect that she was owner in possession of land as described in the plaint in view of a family settlement dated 30.3.1999. After plaintiff closed her evidence, instant application was moved by defendant No. 4 seeking to amend the written statement. He pleaded that he wanted to withdraw his admission about execution of registered gift-deed in favour of defendants No. 1 to 3. Prayer has been rejected by the court below observing that withdrawal of admission would cause prejudice to defendants No. 1 to 3. I find no legal infirmity with the order. Defendant No. 4 has not been able to show that he could not have sought amendment before the commencement of trial despite due diligence. Admittedly, trial has been pending since the year 2001 and plaintiffs evidence is already over. In fact, plaintiff stepped into the witness-box and was cross-examined by all the defendants jointly. Defendant No. 4 cannot now take such a plea which would displace the case of other defendants. The judgment in Harbans Lal's case (supra) relied upon by the petitioner cannot be of any help to him as in the said judgment it has been held that admission can be validly explained. However, in the instant case, defendant No. 4 completely wants to withdraw the admission. In such eventuality, amendment would introduce entirely new case which would displace the case of other defendants. In Modi Spinning Mill's case (supra) the apex court held thus:-

10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.

In my considered view, ratio of aforesaid is fully applicable to this case. The revision petition is without any merit and is dismissed.