
(2005) 05 P&H CK 0086
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2430 of 2005

Paramjit Kaur

APPELLANT

Vs

Sajjan Singh and Others

RESPONDENT

Date of Decision : 12-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2005) 140 PLR 738 : (2005) 3 RCR(Civil) 719

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : O.P. Nagpal, for the Appellant; Sumeet Goel, Caveator, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The instant petition filed under Article 227 of the Constitution challenges order dated 28.3.2005 passed by the Civil Judge (Jr. Division), Rupnagar dismissing an application of the defendant-petitioner to amend her written statement. In the earlier written statement filed by her, she has accepted the legality of power of attorney dated 26.8.1992 and has claimed that the sale deed executed on the basis of power of attorney was valid. On that it was also claimed that the subsequent sale deed executed by her vendee in favour of a third party was also valid.

2. The plaintiff-respondents have filed a suit for declaration to the effect that power of attorney dated 26.8.1992 executed by one Kewal Singh in favour of the defendant-petitioner and the sale deeds on the basis of aforementioned power of attorney were null and void. It was also alleged that the sale deeds and power of attorney were result of fraud and misrepresentation. In the written statement the defendant-petitioner took the stand that the power of attorney was valid and the sale deed executed by her was also valid. The aforementioned stand is sought to be withdrawn by filing an application under Order VI Rule 17 of the Code of Civil

Procedure, 1908 (for brevity, "the Code") with the assertion that the power of attorney was illegal and subsequent sale deed executed by her vendee was also illegal.

3. Mr. O.P. Nagpal, learned counsel for the defendant-petitioner has argued that admission can be permitted to be withdrawn as has been held by the Supreme Court in the case of M/s. Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., . According to the learned counsel in that case also the relationship of landlord and tenant was denied but on a subsequent occasion an application under Order VI Rule 17 of the Code was allowed where the relationship was sought to be admitted. Therefore, learned counsel has submitted that the impugned order cannot stand judicial scrutiny and the same is liable to be set aside.

4. After hearing the learned counsel and perusing the impugned order, I am of the considered view that there is no merit in this petition. It is well settled principle of law concerning amendment of pleadings that mutual destructive pleas cannot be incorporated by seeking amendment under Order VI Rule 17 of the Code. It is equally well settled that admission made cannot be withdrawn by filing an application under Order VI Rule 17 of the Code. The Supreme Court after analysing numerous judgments on the issue has recorded the principles with regard to amendments in the case of B.K.N. Narayana Pillai Vs. P. Pillai and Another, . The relevant extract of the judgment reads as under:-

"...The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original Us was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

(emphasis added)

5. The judgment in the case of B.K. Narayana Pillai's case (supra) was approved in the case of Estralla Rubber's case (supra). It has been observed that by the proposed amendment any admission made in favour of the plaintiff conferring right on him is not permitted to be withdrawn,

6. In the present case, admission by the defendant-petitioner in the written statement with regard to genuineness and validity of power of attorney and the sale deed based thereon is sought to be withdrawn by incorporating amendment to plead that those were invalid documents. According to the principles laid down by the Supreme Court in B.K. Narayana Pillai's case (supra) as well as in Estralla Rubber's case (supra) it is impermissible to permit incorporation of amendment under Order VI Rule 17 of the Code, as such an admission has valuable right on the other side and it is likely to prejudice his right. Therefore, the impugned order is within the fore corners of law and does not need to be interfered with.

7. The plea that the judgment in Estralla Rubber's case (supra) helps the case of the defendant-petitioner is absolutely misconceived. Firstly in that case a categorical finding has been given by the Supreme Court itself in paragraph 5 that there was no admission made by the defendant which was sought to be withdrawn. The only thing proposed by the amendment by the defendant was that he wanted to incorporate the assertion that Ala Mohan Das was a permissive occupier and not owner. The further amendment sought was based on the entries made in the revenue record. It has further been noted that no prejudice was likely to be caused to the plaintiff in that case. However, in the instant case there is no basis for incorporating the amendment which might be supported by some record as was the position before the Supreme Court. Moreover, the plaintiff-respondents are likely to suffer huge prejudice because already a stand has been taken by the defendant-petitioner that power of attorney dated 26.8.1992 in the earlier written statement was perfectly legal and she has transferred lawful title to her vendees. Allowing to withdrawn such an admission, at this stage, would certainly cause wholesome prejudice to the case of the plaintiff-respondents. Therefore, the argument is without any merit and the same is rejected.

For the reasons stated above, this petition fails and the same is dismissed.