
(2002) 03 P&H CK 0050
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 5264 of 1997

Shri Punna Ram and Others

APPELLANT

Vs

Balkar Singh and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2002) 3 CivCC 628 : (2002) 4 RCR(Civil) 175

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Sanjiv Gupta, for the Appellant; Ashish Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—This revision is directed against the order of Civil Judge (Junior Division), Karnal, dated 24.11.1997 whereby he allowed the plaintiff to amend his plaint and incorporate the following para in the amended plaint:

"7(a) That the contesting defendants have gained unlawful possession of the part of the suit property in the year 1997 and rest of the property which was vacant, the possession was taken by them subsequently palpably before filing of application for correction of Khasra Girdawari. Even in the revenue record the possession of the plaintiff alongwith defendants No. 6 to 14 is recorded upto 1994. Even the said defendants in their application for correction of Khasra Girdawari have alleged that they have purchased the suit property from S. Inder Singh and as such their possession cannot be termed as adverse and hostile in this manner. Moreover, it has been observed by Assistant Collector 11 Grade Assandh in his order dated 20.5.95 that the plaintiff alongwith defendants No, 6 to 14 are owners of the suit property but the said defendants happen to be in possession of the same illegally and unlawfully. Thus, the possession of the said defendants in such like situation as held by their lordship cannot be termed as hostile and adverse qua the plaintiff and defendants No. 6 to 14 who are the original owners of the suit property in such like situation."

2. Balkar Singh son of Inder Singh son of Santa Singh of village Jalmana Tehsif As-sandh, District Karnal filed suit for possession against Mamu and others defendants No. 1 to 5 on the allegations that he is the son of Inder Singh son of Santa Singh. Lal Singh, Avtar Singh, Swaran Singh, Sahib Singh defendants No.6 to 9 are the sons of Inder Singh son of Santa Singh. Smt. Jeet Kaur defendant No. 10 and Smt. Sukhwinder Kaur defendant No. 11 are the daughters of Inder Singh. Harbans Kaur, Bhupinder Singh, Lakhwinder Kaur defendants No. 12 to 14 are the widow, son and daughter of Inder Singh's predeceased son Iqbal Singh. Inder Singh purchased a built up house along-with open space (area measuring 2 kanals 12 marlas Field No.1 12/129) vide sale deed dated 11.7.1962 from one Kehar Singh son of Nidhan Singh son of Sher Singh resident of Jalmana Tehsil Assandh District Panipat for a consideration of Rs.1500/-. Said Inder Singh was a bona fide purchaser of the said built up house and open space. Said Inder Singh was owner in possession of the said house. Defendants No.1 to 5 i.e. Mamu and others are Harijans. Harijan locality is quite adjacent to the said disputed house and open space. There arose a minor dispute regarding the exact boundaries of the said house and open space between the deceased Inder Singh and Mamu and odiers defendants No. 1 to 5. A panchayat of the village respectables and elders was convened. Original sale deed respecting the said house/open space was handed over to Mamu etc. defendants No. 1 to 5 at their request so that the dispute regarding the exact boundaries of the said house/open space covered by the said sale deed could be resolved, ft was alleged in the plaint that Mamu and others defendants No. 1 to 5 did not have any concern right, title or interest so far as that house and open space was concerned. After some time, the eldest son of Inder Singh named [qbal Singh expired. His death sent Inder Singh and other members of the family into a great mental shock. Inder Singh could not manage to take back the said original sale deed from Mamu and others defendants No.1 to 5. After a few months, Inder Singh also died as he could not bear the mental shock and agony suffered by him on account of the death of his eldest son iqbal Singh. After the death of Inder Singh, the plaintiff and defendants No.7 to 14 left village Jalmana and started residing in Bijnor (Uttar Pradesh) with their maternal uncle. Defendant No.6 Lal Singh preferred to reside in village Jalmana. All the agricultural property of the share of the plaintiff and defendants No.7 to 14 was sold away at throw away prices. Possession of the said house/open space was never handed over to Mamu and others by said Inder Singh or after his death by his sons. It is alleged in the plaint that Mamu and others defendants No. 1 to 5 tried to take forcible possession of the house in the year 1976-77 under the cover of the custody of the said original sale deed. When Lal Singh defendant No.6 who was present in the village filed a suit for permanent injunction at Kamal restraining Mamu and others defendants No. 1 to 5 from taking unlawfully and forcibly the possession of the said house but Mamu and others defendants No. 1 to 5 with the help of other persons managed to take forcible possession of the said house and open space etc. As a consequence, suit for permanent injunction filed by Lal Singh became infructuous. It is further alleged in the plaint that Mamu and others defendants No. 1 to 5 have no right, title or interest to

remain in possession of the property which is part of the Field No. 112/29, the boundaries of which have been given in para No.2 of the plaint. Mamu and others defendants No. 1 to 5 are trespassers. Their possession is unlawful, illegal and unauthorised.

3. Defendants No. 1 to 5 contested the suit of the plaintiff urging that they are in possession of the property for the last more than 30 years. Their possession is to the knowledge of Balkar Singh plaintiff and others as such no cause of action has accrued to Balkar Singh to file the suit as they i.e. Mamu and others have become owners by virtue of adverse possession.

4. During the pendency of the suit, the plaintiff made an application for amendment of the plaint. By way of amendment, he wanted to incorporate that Jamabandi for the year 1989-90 and Khasra Girdawari upto 1994 support the case of the plaintiff. They show the continuous possession of the plaintiff over the suit property. In the month of February, 1995 Mamu and others defendants No. 1 to 5 who managed to take possession of the entire Field No. 112/29 filed application for correction of Khasra Girdawari showing that they have purchased the property from Sardar Inder Singh orally without any deed, and now the) have taken a contradictory stand that they are in adverse possession. Their possession could not be viewed as adverse in view of the stand taken by them in their application for correction of Khasra Girdawari filed before Assistant Grade II Grade, Assandh in February, 1995. It was alleged in that application that with a view to grab the land of the plaintiff and defendants No. 6 to 14 Mamu and others are taking different stands. It was alleged in that application that they forgot to state what was stated by the defendants in their application for the correction of Khasra Girdawari. Their statements in their application for correction of Khasra Girdawari negatives their plea that their possession is adverse. They wanted to add the following para in the amended plaint:

"7(a) That the contesting defendants have gained unlawful possession of the part of the suit property in the year 1997 and rest of the property which was vacant, the possession was taken by them subsequently palpably before filing of application for correction of Khasra Girdawari. Even in the revenue record, the possession of the plaintiff alongwith defendants No. 6 to 14 is recorded upto 1994. Even the said defendants in their application for correction of Khasra Girdawari have alleged that they have purchased the suit property from S. Inder Singh and as such their possession cannot be termed as adverse and hostile in this manner. Moreover, it has been observed by Assistant Collector If Grade Assandh in his order dated 20,5.95 that the plaintiff alongwith defendants No. 6 to 14 are owners of the suit property but the said defendants happen to be in possession of the same illegally and unlawfully. Thus, the possession of the said defendants in such like situation as held by their lordship cannot be termed as hostile and adverse qua the plaintiff and defendants No. 6 to 14 who are the original owners of the suit property in such like situation."

5. This application was resisted by defendants No. 1 to 3 urging, inter-alia that

this suit was filed in the year 1990. Application for amendment has been made in the year 1997. Plaintiffs evidence has been recorded. Proposed amendment should not be allowed at such a belated stage. Plaintiff wants to fill up the lacunae through the process of amending the plaint. Plaintiff cannot be allowed to fill up lacunae in the garb of amending the plaint. Plaintiff has clearly stated in the plaint that he took forcible possession in the year 1977 after the death of Inder Singh and after every other member of the family had left village Jalmana and shifted to Bijnor (Uttar Pradesh). No amendment can be allowed the effect of which is the withdrawal of the admission so candidly made by one party supporting the other party.

6. Learned Civil Judge (Junior Division), Kamal allowed this application vide order dated 24.11.1997. He allowed the plaintiff to incorporate the proposed amendment in the plaint by way of inserting para No. 7-A thereto.

7. I have heard the learned counsel for the parties and have gone through the record.

8. It was submitted by the learned counsel for the petitioners that proposed amendment should not have been allowed as the allowing of the proposed amendment had the effect of withdrawal of the admission made by the plaintiff in para No. 5 of the original plaint. In support of the submission that no amendment of the pleadings can be allowed the effect of which is the withdrawal of the admission made earlier, he drew my attention to *Jaswant Singh v. Shiromani Gurdwara Parbandhak Committee* 1996(2) R.R.R. 296 where it was held that law is well settled that the defendant cannot seek an amendment in the written statement which is totally inconsistent with his pleadings amounting to his withdrawal of admission made in the original written statement. Inconsistent and contradictory allegations in negation to the admitted position of facts and mutually destructive allegations of facts would not be allowed to be incorporated by way of amendment in the pleadings. Such an amendment certainly causes prejudice to the other side which cannot be compensated by costs; especially when the defendant comes out with a pies shifting from its original stand at the fag end without any explanation, amendment should not be allowed.

9. He drew my attention to *Anwar Ahmad Vs. State of U.P.*, where it was held that amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by defendants in written statement cannot be allowed. He drew my attention to *Heeralal v. Kalyan Mal* 1998(1) R.C.R. 140 (Civil) where it was held that defendant cannot be allowed to withdraw a clear admission of fact and taking inconsistent stand affecting prejudicially the plaintiff. In a suit for partition the defendants made a clear admission that out of 10 items, 7 were joint properties and the plaintiff had 1/3rd share and they had 2/3rd undivided share. Once such a stand is taken, it has to be held that there was no contest between the parties to that extent and a preliminary decree under Order XV Rule 1 CPC can be passed straightaway. Such a right accrued to the plaintiff cannot be taken away by the defendant by taking

inconsistent stand and withdrawing such admission.

10. In *Heeralal v. Kalyan Mal* (supra), the view taken by the Hon"ble Supreme Court in *Modi Spinning & Weaving Mills Co. Ltd and Anr. v. Ladha Ram & Co.* (supra) was followed.

11. He also submitted that no amendment can be allowed if it is sought after inordinate delay.

12. Learned counsel for the respondents on the other hand submitted that amendment can always be allowed even if the allowing of amendment has the effect of withdrawal of the admission made earlier. It was submitted that a party has always right to show that admission made previously was made wrongly and under miscomprehension of facts. It was submitted that in the plaint originally filed, the plaintiff forgot to advert to the allegations made by the defendants made for correction of khasra girdawari. In that application, the defendants had alleged that they had purchased the suit property from Sardar Inder Singh orally without any deed. It was submitted that if that was so, they could not said to be in adverse possession when they had set up title to the suit property by purchase. In support of this submission that through the process of amending the pleadings, admission made erroneously can always be withdrawn he drew my attention to *Gujjar Singh v. Gulzar Singh and Ors.* 1991 2 P.L.R. 266 where it was held that admission made by a party may be withdrawn or explained away. It is always to a party to show that admission was wrong. Admission earlier made in written statement apparently erroneous and on assumed facts, party cannot be refused to amend its pleadings even if sought to be done at quite late stage or appellate stage. In *Haji Mohammed Ishaq Wd. S.K. Mohammed and Others Vs. Mohamad Iqbal and Mohamed Ali and Co.*, it was no where held that the admission once made cannot be withdrawn, In *Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another*, It was ruled by the Hon"ble Supreme Court that an admission made by a party jnay be withdrawn or explained away. In *Kehar Singh v. Balraj Singh and Ors.* 1991 2 P.L.R. 616 it was observed as follows:

"On a consideration of the matter, I am of view that this revision deserves to succeed. It is true that Kehar Singh made an admission that defendants No.2 to 9 owned 8/9th share in the land, which was subject matter of gifts but it is always open to a party to show tat the admission was wrong. If defendants 2 to 9 are the collaterals of an equal degree to the plaintiff, it will be open to them to show the same and if they establish then the plaintiff will fail in spite of amendment. But in case the plaintiff is not given opportunity to back out of wrong admission, he would not be able to show that the admission was wrong".

13. In *Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) through LRs. and Ors.* 1996 HRR 219 it was held that amendment may be disallowed when the amendment sought to be introduced would introduce a new cause of action. It is open to the defendant to take even a contrary stand and thereby

cause of action is not effected.

14. In this case, the plaintiff appears to have alleged wrongly what he has alleged in para I of the plaint. He has always the right to plead that admission made by him erroneously as to the forcible possession of Mamu and others since the year 1977 was erroneous. If he were not allowed to amend the plaint, he would not have the opportunity of showing that the admission made by him was erroneous and that this is the correct position.

15. Delayed filing of the application can be compensated with costs. For the reasons given above, this revision fails and is dismissed with costs. Counsel is assessed at Rs. 1100/-.