

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2291 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.05.12.2012 in I.A.No.548 of 2010 in O.S.No.365 of 2006 on the file of XIII Senior Civil Judge, (F.T.C.), City Civil Court, Secunderabad.

2. The petitioner herein is 1st defendant in the above suit.
3. The 1st respondent/plaintiff filed the suit for partition of three items shown in the plaint schedule.
4. The petitioner herein, who is the 1st defendant, filed a written statement claiming exclusive rights in respect of item no.1 of the plaint schedule, but admitting that item nos.2 and 3 of the plaint schedule are liable for partition.
5. Issues were framed. Trial commenced and the matter was coming up for cross-examination of PW.1. At that stage, the petitioner changed his previous counsel and filed I.A.No.548 of 2010, seeking amendment of the written statement.
6. In the application filed seeking amendment of the written statement, it is contended by petitioner that the facts mentioned in the written statement filed on 25.09.2006 by him are not factually correct; that some paragraphs are required to be deleted; several paragraphs are to be added and such amendment is necessary for the purpose of determining the real

question in controversy between the parties.

7. According to petitioner, item nos.2 and 3 being house property bearing H.No.1-4-134 and agricultural land admeasuring Acs.5.00 in Sy.No.314 situate at Malkaram, Chennapur Village, Jawahar Nagar Gram Panchayat, Shameerpet Mandal, Ranga Reddy District, are not available for partition. Thus, the admission in the original written statement with regard to these two items (that they are liable for partition) is sought to be withdrawn by way of the amendment.
8. This application was opposed by 1st respondent who contended that since the amendment is being sought after trial commenced, it should be rejected in view of proviso to Order 6 Rule 17 C.P.C.
9. By order dt.05.12.2012, the Court below dismissed the said application. It held that change of counsel is not a tenable ground, that the amendments now proposed by petitioner amount to withdrawing admissions already made by petitioner in favour of 1st respondent and cause injustice to 1st respondent, and therefore, are liable to be rejected.
10. Challenging the same, the present Revision is filed.
11. Heard Smt. D. Padmavathi, counsel for petitioner. None appears for respondent.
12. The counsel for petitioner contended that the Court below is not correct in stating that the amendments by way of admission cannot be withdrawn and relied upon the judgments in **Panchdeo Narain Srivastava v. Km. Jyoti Sahay and another, Baldev Singh and others v. Manohar Singh and**

another, **Sushil Kumar Jain v. Manoj Kumar and another**, and **Revajeetu Builders and Developers v. Narayanaswamy and sons and others**.

13. No doubt, in **Panchdeo Narain Srivastava** (1 supra), a two-Judge Bench of the Supreme Court observed that procedural law is intended to facilitate and not to obstruct the court of substantive justice and rejected the contention that by device of amendment an important admission cannot be withdrawn. It held that an admission made by a party may be withdrawn or may be explained away.
14. However, in **Heeralal v. Kalyan Mal and others**, another two-Judge Bench of the Supreme Court held that a defendant cannot be allowed to withdraw an admission made in favour of the plaintiff and that if such amendments are allowed in the written statement, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. It followed a three-Judge Bench judgment of a Supreme Court in **Modi Spinning and Weaving Mills Co. Ltd v. Ladha Ram and Co.**. The court held that once the written statement contains an admission in favour of the plaintiff, by amendment such admission of the defendants cannot be allowed to be withdrawn if such withdrawal would amount to totally displacing the case of the plaintiff and which would cause him irretrievable prejudice. In **Revajeetu Builders and Developers** (4 supra) also the principle laid down in **Heeralal** (5 supra) has been reiterated and the three-Judge Bench judgment in **Modi Spinning and Weaving Mills** (6 supra) has been followed.

15. In **Baldev Singh** (2 supra) also the Supreme Court held on facts therein that by way of amendment, an elaboration of the defendants' case was sought and not withdrawal of any earlier admission. It categorically held that after examining the original written statement and the application for amendment of the written statement in depth, there was no admission on the part of appellants which was sought to be withdrawn by way of amending the written statement. Therefore, this decision also cannot be of much assistance to petitioner.
16. In **Usha Balashaheb Swami and others v. Kiran Appaso Swami and others**, the Supreme Court again considered the issue and distinguished **Heeralal** (5 supra) on the facts of the said case. The Court held that it was not a case of withdrawal of an admission by the appellants, but that admission was kept intact and only a proviso had been added and such a course is permissible in law. It categorically held that the facts in that case were not one where there was withdrawal of admission made in the written statement nor was it a case of washing out the case of the appellant in the written statement, and therefore, the amendment sought for, should have been allowed.
17. The petitioner in the present case is seeking to withdraw the admission and not seeking to add any rider or proviso to the admission. Therefore, this judgment also does not assist the petitioner.
18. In **Sushil Kumar Jain** (3 supra), no doubt, the Supreme Court followed the judgment in **Panchdeo Narain Srivastava** (1 supra) and held that an admission made by a defendant in his written statement can be allowed to be withdrawn or can be

explained away.

19. But having regard to the fact that the three-Judge Bench judgment in **Modi Spinning and Weaving Mills** (6 supra) has not been taken note of by the two-Judge Bench in **Panchdeo Narain Srivastava** (1 supra) and the two-Judge Bench which decided in **Usha Balashaheb Swami** (7 supra), this Court prefers to follow the judgment of the larger Bench which has been subsequently reiterated in **Heeralal** (5 supra).
 20. Therefore, in view of the judgments in **Heeralal** (5 supra) and **Revajeetu Builders and Developers** (4 supra), which have both followed the three-Judge Bench in **Modi Spinning and Weaving Mills** (6 supra), I am not inclined to follow the judgments in **Panchdeo Narain Srivastava** (1 supra) and **Sushil Kumar Jain** (3 supra), which have been rendered by smaller Benches of two Judges.
 21. Since the petitioner is seeking to withdraw the admission made in the earlier written statement filed by him, such a course cannot be permitted in view of the above decisions.
 22. Therefore, no error of jurisdiction has been committed by the Court below in refusing to permit amendment to the written statement and in dismissing I.A.No.548 of 2010.
 23. The Civil Revision Petition is without any merit and it is accordingly dismissed. No order as to costs.
 24. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.
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JUSTICE M.S.RAMACHANDRA RAO

Date: 14.07.2015

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