

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

CR No. 3306 of 2011 (O&M)
Date of decision: April 7, 2015

Ram Phal

...Petitioner

Versus

Dharam Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. S.R. Hooda, Advocate,
for respondents No. 1 and 2.

K. KANNAN, J. (Oral)

1. The petitioner is the plaintiff who has a grievance that the trial court has allowed for an amendment in the written statement that amounted to withdrawal of admissions made already regarding plaintiff's status.

2. The petitioner, who is the plaintiff, and the contesting respondents are the sons of Hazari Lal. Hazari Lal had a brother named Shiv Lal. The plaintiff's contention was that Shiv Lal had no issue and, therefore, the plaintiff was given in adoption to Shiv Lal through adoption deed dated 19.2.1968. The suit was filed for partition of 1/5th share claiming a share on the basis of a Will alleged to have been executed by the biological father Hazari Lal granting to him a share equal to the other sons of Hazari Lal. Hazari Lal admittedly is no more and the plaintiff's claim to

the property is on the basis of a Will and not by natural succession, he having gone in adoption to Hazari Lal's brother Shiv Lal. The reference in the plaint to the Will is set out in para 6 and the reference to the fact that he was given in adoption is set out in the 1st paragraph itself. The 1st paragraph reads as under:-

“1. That the plaintiff was born out of the loin of Hazari Lal (sic) and later on he was adopted by Sh. Shiv Lal on 19.2.1968.”

The response by the defendants in the written statement, as originally filed is as under:-

“That para No.1 of the plaint is correct.”

Elsewhere in the written statement in paragraph 6, the defendants have stated as follows:-

“6....When Ram Phal has been adopted by Shiv Lal, he remains no member of family of Hazari, so the property of Hazari cannot be inherited by Ram Phal in any way. No arrangement for his wife married or unmarried daughter has been made in the alleged will. The will was never produced anywhere by the plaintiff after death of Hazari.”

Again in paragraph 8, the defendants have stated as follows:-

“8...After adoption of plaintiff by Shiv Lal, he has snapped all rights in the property of Hazari and he has been transplanted in the family of Shiv Lal. The plaintiff has taken all the property of Shiv Lal and he out of greed, wants to grab the property of Hazari Lal, for which he has no right, title or interest to do so. The plaintiff has no claim in the properties.”

3. The defendants have now filed an application stating that they had inadvertently made reference to the plaintiff as adopted when there was no such adoption. At the time of arguments, it was also stated that in a suit filed with reference to the estate of Shiv Lal, the adopted father of the plaintiff, the defendants had denied the adoption. They would, therefore, contend that while they denied the adoption in yet another suit, they have inadvertently admitted the adoption. The court below found that all the admissions made with reference to the adoption could be modified in the manner sought for by the defendants by adopting negative expression of 'not' before every expression of the plaintiff being described as adopted son.

4. The order passed by the court below is patently wrong and betrays a wrong understanding of law. The counsel appearing on behalf of the respondents would, however, support the impugned order and makes a reference to the judgment of the Supreme Court in Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others 2007 (2) RCR (Civil) 830, wherein it was held that the courts shall be liberal in considering the application for amendment of the written statement. The same proposition was pronounced in yet another decision reported in Revajeetu Builders & Developers Versus Narayanaswamy & Sons and others 2010 (1) RCR (Civil) 27. The two decisions, according to the learned counsel for the respondents, would enable the respondents to bring the amendment and the court below was justified in allowing the same.

5. The law that a court will be liberal in construing an amendment or statement ought not be misinterpreted as allowing for a liberty to withdraw admission. If there is an admission made under mistake, there is surely a scope for explaining the admission and the circumstances under

which such mistake had happened. If the respondents were contending a particular status as a matter of only belief, the source of information could be shown to be wrong and the belief could be explained as resulting in a statement which is wrong. If, on the other hand, if a particular statement is not merely on the basis of a belief but on knowledge, then it cannot be withdrawn, for, it could amount to a great prejudice by substituting a knowledge for belief. The verification made in the written statement makes evident that the defendants have understood the difference between the knowledge and the belief and the verification states that the averments in para No. 1 to 5 and 18 and 1 to 6 are correct to the knowledge and the statement in para 16 and 17 are correct to the best of belief. What was stated to be within knowledge admitting the adoption could not have been, therefore, resiled by the parties. The Supreme Court has explained the difference between averments made on the basis of knowledge and belief in the judgment in Shivajirao Nilangehar Patel Versus Dr. Mahesh Madhav Gosain 1987 (1) SCC 227 in the context of law affidavits are required to be drawn up under Order XIX CPC. To our purpose, it is relevant how the verification must be understood and how a statement made on personal knowledge can not be allowed to be modified but there is a scope, if at all, only to modify or withdraw a statement made on belief, if the source of information turns out to be unreliable or shown to have transmitted a mistaken information.

6. The hurdle to allowing for an amendment is, therefore, that a statement verified to be true due to personal knowledge can not be permitted to be withdrawn. It will amount to withdrawal of admission and lending premium to stating deliberate falsehood. In B.K. Narayana Pillai V.

Parameswaran Pillai (2000) 1 SCC 712, the Supreme Court ruled that the proposition that the defendant can take alternate/inconsistent pleas in defence by way of amendment is beset with following qualifications: (i) proposed amendment should not result in injustice to the other side; (ii) any admission made in favour of plaintiff should not be withdrawn; (iii) inconsistent and contradictory allegation with regard to admitted facts should not be raised. In Usha Balasaheb Swami and others Vs. Kiran Appaso (2007) 5 SCC 602, the Supreme Court said that a party can not wriggle out of an admission by seeking amendment. It explained, the admission can be explained and it would be permissible to add a rider and/or proviso to the admission while keeping the admission intact. An amendment that would cause serious prejudice to the plaintiff's case, it was stated in Heeralal V. Kalyan Mal and others (1998) SCC 278, shall not be allowed.

7. The order passed is erroneous and it is set aside with costs of ₹5,000/-.

April 7, 2015
prem

(K.KANNAN)
JUDGE