

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.5871 of 2015 (O&M)

Date of Decision.09.09.2015

Chandu (deceased) through LRs

.....Petitioner

Versus

Smt. Ram Kali and others

.....Respondents

Present: Mr. Ajay Jain, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

-.-

K. KANNAN J. (ORAL)

1. The revision petition is against the order dismissing an application filed by the defendant that a written statement that had been already filed in Court had been brought about by filling up recitals in blank papers obtained by the plaintiff who was his daughter and that the written statement admitting to the plaintiff's claim was not genuine. He wanted to resile from the statement and file a fresh statement and when it was declined, he had come at revision to this Court in Civil Revision No.6392 of 2012. I had passed an order on 4.5.2015 to allow for evidence to be given by the person that there had been a fraud practiced upon him to secure signature in the written statement and that it is not binding on him and that he should be permitted to file an amended written statement or a fresh written statement. The Court has allowed for such an enquiry to take place on the basis of the directions given by this Court and it has come to the conclusion through the impugned order

that the fraud alleged by the defendant that he was not really a willing party to the document and that the written statement had not been fabricated by using up his thumb impression. The Court has dismissed the application finding that the fraud has not been proved. It appears that the defendant who was denying the written statement and was seeking for an adjudication on his application is now dead and his legal representatives prosecuting the application are incidentally parties already in the suit also.

2. I am of the view that the whole exercise is unnecessary and an overdoing of what is not necessary for an adjudication in the case. If the plaintiff who was the daughter of the deceased-defendant had filed the suit for a declaration that a particular decree suffered by the father in the year 1990 was not valid and made the father himself a party originally and the father had purported to have filed the written statement admitting to the fact that the decree could be passed while the other defendants were contending that the decree passed already cannot be assailed at the instance of the daughter. It was fair enough for the other defendants to contend that decree originally passed cannot be assailed on any of the grounds which the plaintiff relied on. A mere statement by the father that the decree could be passed cannot secure to the plaintiff what she was pleading for, when there was a strict contest brought by other defendants. A title or right to the property can never go by mere admission and the grounds for assailing the decree will have to be brought out. If the father himself is not alive and if the plaintiff is making some statement attributing to the invalidity of the decree obtained against the father, the plaintiff will have to prove the

same irrespective of whether the father had admitted that the decree could be passed in favour of the plaintiff or not.

3. The application not granting permission to have the statement substituted or modified by resiling from the original statement filed admitting to the plaintiff's claim must be only a subject of challenge along with other grounds if the suit is ultimately decreed and all the defendants are aggrieved. It is possible under Section 105 of the Civil Procedure Code to argue that any particular order passed in an interim application ought not have to have been passed in that way and the extent to which that application has impacted the ultimate decision could also be a subject of appeal in appeal. The provision under Section 105 CPC is salutary, only to ensure that the parties do not engage in revisions at every stage and stall the proceedings in trial. No prejudice could be caused at all to any of the defendants by the fact that the amended written statement was not received and the trial must go on what is contended by the other defendants already. The so-called admission of the father could still be explained by the other defendants as not having been brought with his knowledge and there could be no bar to such an evidence given by the party.

4. The learned counsel refers to me two decision of this Court in Harwinder Singh VS. Balwinder Singh and others 2004(3) PLR 126 and Bant Singh Vs. Kuldeep Singh and another 1995 PLJ 13 where the Court was allowing an amendment to the written statement being filed on a plea by a party that the original written statement had been brought about by fraud and that there were circumstances to allow for the amendment to the written statement. We do not confront with the

similar situation. There was not even an application for amendment of the written statement but a plea for withdrawal of the written statement and the trial Court has gone through a literal mini trial for allowing a party to prove that the original statement filed was obtained by fraud and the Court had declined to entertain such a plea, it cannot be brought in revision for a challenge that the decision cannot be so taken. It will literally mean stalling the trial endlessly and it is no argument that the new written statement was sought to be substituted even before the commencement of the trial. One, the mere pendency of the revision before the Court is sufficient to stall the trial and two, there can be simply no prejudice in the manner which I have outlined above for a trial to progress even without reference to the written statement which was already filed by the defendant. The other defendants cannot be bound by any written statement given by the father and if he is also not alive, it cannot make the situation better for either of the parties.

5. I do not think there is any scope for intervention. The revision petition is dismissed but with the above observations.

(K. KANNAN)
JUDGE

September 09, 2015
Pankaj*