

256

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

**CR-1198-2015 (O&M)
Date of decision : 25.07.2016**

Baldev Kaur

... Petitioner

Versus

Surjit Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. H.P.S. Ghuman, Advocate
for the petitioner.

Mr. S.S. Salar, Advocate
for respondent No.3.

Mr. Mayank Mathur, Advocate
for respondent No.4.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.2 is aggrieved of the impugned order dated 20.01.2015, whereby the application dated 21.11.2014 seeking permission of the Court below to withdraw the admission made in the written statement dated 16.04.2009, has been dismissed.

Mr. H.P.S. Ghuman, learned counsel appearing on behalf of the petitioner-defendant No.2 submits that the aforementioned written statement

was filed by defendant No.1 Hardeep Kaur and the petitioner-defendant No.2 Baldev Kaur, jointly by engaging the counsel Sh. Parminder Singh Sandhu, wherein in paragraph No.4 it has been pleaded that as per the registered Will dated 01.09.2006, defendant No.1 is the only legal heir of Hamir Kaur. The aforementioned admission was sought to be withdrawn and various other admissions referred to in paragraph No.6 and other part of the written statement qua the validity of the Will. It has been stated that the petitioner-defendant No.2 had in good faith in defendant No.1 being younger sister, who took thumb-impression of her on some document with the help of the counsel on the premise that they were necessary for sanctioning of the mutation of the land of Hamir Kaur, used as the written statement by treating it to be admission as no summons ever received or signed by the defendant No.2. In support of his contentions he relies upon the judgments of this Court in “Jagjit Singh V/s Mohinder Pal” 1994 (1) RCR (Rent) 734, “Smt. Raj Pati @ Roshni V/s Dharam Singh and others” 2003 (4) RCR (Civil) 540 and “Gautam Sarup V/s Anand Sarup and others” 2006 (4) RCR (Civil) 248 to contend that admission can be withdrawn in case, it has been made due to inadvertence.

Mr. Mr. S.S. Salar and Mr. Mayank Mathur, learned counsel appearing on behalf of the respondent Nos.3 & 4-plaintiff(s) submits that the application is wholly misconceived and it is an after-thought, whereas in the proceedings conducted before the Assistant Collector for mutation, the petitioner-defendant No.2 appeared and acknowledged the execution of the Will in favour of the defendant No.1. He has drawn the attention of this Court to Annexure R-2 attached with the application bearing No.24595-C-II

of 2015. The aforementioned statement was recorded in the evidence.

He further submits that application for amendment of the plaint was filed and the reply was filed jointly by defendant Nos.1 and 2. The reply is dated 25.02.2010. The present application has been filed by engaging another counsel, namely, Avtar Singh. In cross-examination, she admitted the engagement of the counsel, namely, P.S. Sandhu. She cannot be made to believe that she was not aware of the written statement, rightly so, the application has been dismissed. The ratio decidendi culled out by the judgments cited above do not apply as all have been rendered by observing that the mistake was owing to inadvertence, whereas it is not the case of such nature, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. H.P.S. Ghuman, for, the petitioner-defendant No.2 as defendant No.2 along with defendant No.1 had been contesting the case by filing the written statement and engaged the counsel, namely, P.S. Sandhu. This fact had been admitted in the cross-examination, even, while filing the reply to the application seeking amendment of the plaint, the petitioner-defendant No.2 had signed the same along with defendant No.1. The reply is dated 25.02.2010. The present application has been filed on 21.11.2014. In my view, the admission in the written statement has created a valuable right in favour of the plaintiff(s).

For the foregoing reasons, the trial Court has given a reasonable finding in dismissing the application, I am fully agreement with the aforementioned finding. I do not find any illegality and perversity in the

order which cannot be said to be without jurisdiction. No ground is made out for interference and accordingly, the revision petition is dismissed.

25.07.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No