

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.2411 of 2013(O&M)

Date of Decision:22.1.2016

Surinder Kaur

---Petitioner

vs.

Inderjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajesh Gupta, Advocate
for the petitioner

Mr. Gurcharan Dass, Advocate
for respondent No. 1

Mr. Sunil Chadha, Senior Advocate
with Ms. Pallavi Singh, Advocate
for respondent No. 2

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

Rekha Mittal,J.

The present petition lays challenge to orders dated 26.2.2013 (Annexure P-4) and dated 22.3.2013 (Annexure P-6) passed by the Additional Civil Judge (Junior Division), Khanna whereby the trial court has disallowed filing of the written statement (Annexure P-2) and affidavit (Annexure P-3) by the petitioner.

The short question that calls for determination is “*whether Surinder Kaur impleaded as legal representative of Sital Singh (since deceased)-defendant No. 2 is entitled to file an additional written statement inconsistent to the allegations set up in the written statement filed by Sital Singh?*”

To answer the aforesaid question, a brief reference to the controversy involved in the suit filed by Inderjit Singh, respondent No. 1 is pertinent. Inderjit Singh filed suit for possession by way of specific performance of an agreement to sell dated 13.6.2005 executed by Sital Singh (since deceased) through his attorney Kulwinder Singh respondent No. 3 in respect of land measuring 16 biswas 5 biswasi situated in the revenue estate of village Kaddon, Tehsil Payal, District Ludhiana as per jamabandi for the year 2001-02. Further, challenge has been laid to sale deed dated 27.7.2005 in respect of land measuring 15 biswas 11 biswasi executed by Sital Singh in favour of Shiva Fibers Private Limited (respondent No. 2) being illegal, result of fraud and misrepresentation and not binding upon the rights of respondent No. 1.

In the said suit, Sital Singh filed the written statement and admitted that he executed a general power of attorney dated 17.9.2004 in favour of Kulwinder Singh respondent No. 3 but when Kulwinder Singh started misusing the said attorney, he revoked /cancelled the power of attorney vide Abtalnama dated 12.7.2005. Thereafter, vide registered sale deed dated 27.7.2005, he sold the suit property in favour of Shiva Fibers Private Limited (respondent No. 2) and possession of the suit property was delivered to the vendee at the spot and the vendee is owner in possession of

the suit land. It is further averred that the alleged agreement to sell dated 13.6.2005 executed by Kulwinder Singh in favour of Inderjit Singh, respondent No. 1/plaintiff (father of Kulwinder Singh) is illegal, null and void, manufactured document and a sham transaction done by Kulwinder Singh in favour of his father to harm the legal rights of the answering defendant.

During pendency of the suit, Sital Singh defendant No. 2 passed away and his widow Surinder Kaur (petitioner herein) was brought on record being legal representative of Sital Singh.

Inderjit Singh, plaintiff/respondent No. 1 filed an application for amendment of the plaint which was allowed by the trial court. As a result of amendment, para 11-A was added in the plaint, reads as follow:-

“That defendant illegally and forcibly got the possession of the disputed property from the plaintiff on 1.11.2006, on the pretext that the mutation has been sanctioned in his favour.”

After the amendment of the plaint, Surinder Kaur as legal representative of Sital Singh filed the written statement. After evidence of the plaintiff/respondent No. 1 was concluded, Surinder Kaur tendered into evidence her affidavit (Annexure P-3) by way of examination in chief.

Counsel for Shiva Fibers Private Limited raised an objection against the written statement and affidavit filed by Surinder Kaur on the plea that she was not competent to withdraw the admission(s) made by her late husband Sital Singh as Surinder Kaur does not have an independent right to contest the proceedings. The objection raised by respondent No. 2

was sustained by the trial court and feeling aggrieved, the present petition has been preferred by Surinder Kaur.

Counsel for the petitioner contends that the petitioner was entitled to file a written statement after respondent No. 1 amended his plaint. The written statement was taken on record more than three years prior to raising of objection by counsel for respondent No. 2. It is vehemently argued that the learned trial court has committed a gross error in accepting plea of respondent No. 2 that written statement and affidavit filed by the petitioner cannot be taken on record.

Counsel for respondent No. 2, on the other hand, has supported the impugned order with the submissions that as the petitioner did not contest the suit in her independent right and had only stepped into the shoes of Sital Singh (since deceased) her husband, she is not competent to file a written statement contrary to the plea raised by Sital Singh particularly to withdraw the admission that Sital Singh executed a legal and valid sale deed in favour of respondent No. 2 and in pursuance thereof, possession of the suit property (subject matter of the sale deed) was delivered to the vendee. In support of his contention, he has placed reliance upon judgments of this Court **Hakam Singh and others vs. Isham Singh and others 2009 (2) Law Herald 1461** and **Ramnik Arora vs. Sardar Gurdip Singh 2014 (10) RCR (Civil)2088**.

I have heard counsel for the parties and perused the records.

\ Before advertng to the rival submissions made by counsel for the parties, a plain reading of the written statement filed by Sital Singh on 25.10.2005 and the written statement filed by Surinder Kaur would leave no

manner of doubt that Surinder Kaur has taken a complete somersault and raised contradictory pleas viz-a-viz the written statement filed by her husband. She has admitted the agreement to sell propounded by respondent No. 1 and denied the legality and validity of the sale deed set up by respondent No. 2 whereas Sital Singh challenged legality and validity of agreement propounded by the plaintiff/respondent No. 1 and admitted the sale deed of respondent No. 2.

Counsel for the petitioner has not made any submission either before the trial court or this Court that Surinder Kaur has a right independent that of Sital Singh in the present lis which entitles her to file an additional written statement in regard to the facts pleaded in the original plaint. In view of enunciation of law laid down in the judgments relied upon by counsel for respondent No. 2, the petitioner is not entitled to file an additional written statement and to withdraw the admission(s) made by Sital Singh when otherwise, no such plea has been raised by Surinder Kaur that the admission was made under a wrong premise or a case is made out for explaining the admission or withdrawing the same. Not only this, no permission was obtained from the trial court for filing an additional written statement by the petitioner. No doubt, respondent/plaintiff made an amendment in the plaint and by way of amendment, para 11-A reproduced hereinabove, was inserted in the plaint and the defendants in the suit were entitled to file the written statement to the amended plaint. Nevertheless, the petitioner in the guise of filing written statement to the amended plaint can not be permitted to take a complete contradictory stand viz-a-viz what was pleaded by her husband Sital Singh.

In view of the above, in my considered opinion, there is no error much less illegality in the order passed by the trial court by holding that the written statement and affidavit by way of examination in chief filed by the petitioner cannot be taken into consideration. The mere fact that the trial court has mentioned that the written statement and affidavit cannot be taken on record appears to be the result of inadvertent mistake because the written statement and affidavit have already been taken on record but the same certainly cannot be taken into consideration for decision of the matter in controversy. I would hasten to add that as the petitioner is entitled to file a written statement to the amended plaint, she would be at liberty to file a fresh written statement but subject to the observations made hereinbefore.

For the foregoing reasons, finding no merit, the petition is dismissed in the aforesaid terms.

(Rekha Mittal)
Judge

22.1.2016
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