

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No.507 of 2015 (O&M)
Date of decision : February 12, 2016

J. S. Nagpal

..... Petitioner

Versus

Sube Singh and others

..... Respondents

CR No.5728 of 2014 (O&M)

J. S. Nagpal

..... Petitioner

Versus

Sube Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Mani Ram Verma, Advocate
for respondent No.1.

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).

This order of mine shall dispose of two revision petitions bearing CR No. 507 of 2015 and 5728 of 2014.

The petitioner-defendant No.5 is aggrieved in CR No. 507 of 2015 of the order declining permission to file written

statement. In essence, recall of the statement suffered by the counsel on 4.4.2012 viz-a-viz having not to file the written statement and in CR No. 5728 of 2014 the petitioner is aggrieved of the order whereby after allowing the amendment of the plaint permission sought to file amended written statement has been declined.

Learned counsel appearing on behalf of the petitioner-defendant No.5 submits that three days prior to the suffering of the statement by the counsel, defendant Nos. 1 to 3 executed a registered gift deed dated 29.3.2012 and the suit for declaration claiming right and interest in the same gift deed in favour of defendant Nos. 4 and 5 has become essential and necessary to contest the same. In support of his contentions he has relied upon the judgment in **Himalayan Cooperative Group Housing Society Vs. Balwan Singh 2015 (7) SCC 373** and prays for setting aside of the order.

Mr. Mani Ram Verma, learned counsel appearing on behalf of the respondent No.1 submits that there is no illegality and perversity in the impugned order in both the petitions. Once a statement has been suffered not to file the written statement the same cannot be withdrawn. Once the amendment in the plaint was allowed, the defendant who has already waived off his right to file the written statement could not have filed a amended written statement. It was an attempt to circumvent the statement suffered on 4.4.2012.

I have heard learned counsel for the parties and appraised the paper book.

The Hon'ble Supreme Court in the judgment in

Himalayan Cooperative Group Housing Society's case (supra)

has held that in such a case where the lawyer makes a statement withdrawing the suit or the defence of the defendants, the principles culled out by the Supreme Court would apply. The same reads thus:-

- “i) Lawyers owe fiduciary duties to their clients- Lawyers should follow the client's instructions rather than substitute their judgment for that of the client.
- ii) A lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement.
- iii) In some cases lawyers can make decisions without consulting client-While in others, the decision is reserved for the client.
- iv) It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights.”

The present case squarely falls within the purview of aforementioned principles. If the statement could not have been made by the lawyer and would have been of the defendant, the things would have been different.

In view of the above, I am of the view that petitioner-defendant No.5 should be granted one opportunity to contest the suit.

Accordingly, the statement dated 4.4.2012 suffered by the counsel is ordered to be withdrawn. The impugned orders are set aside.

Liberty is granted to the petitioner to file written statement to the amended plaint.

The revision petitions stand allowed.

(AMIT RAWAL)
JUDGE

February 12 , 2016
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