

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

CR No.6733 of 2016(O&M)

Date of decision:18.10.2016

Ashwani Kumar

....Petitioner

VERSUS

Ajay Kumar Verma and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 03.09.2016 passed by the Civil Judge (Junior Division), Gurgaon (Annexure P-5) whereby application filed by the petitioner for amendment of the written statement has been dismissed.

Ajay Kumar Verma – respondent No.1 has filed a suit for ejectment and recovery of mesne profits/damages against the petitioner (his brother) by claiming that he has become owner of the suit property bearing No.128, Sector 4, Gurgaon, on the basis of compromise and award registered in the office of Sub Registrar, Gurgaon vide Vasika No.7369 dated 20.06.2012. It has further been pleaded that the suit property was previously owned by Sh. Jagdish Chander, father of the plaintiff and defendant No.1 and the petitioner had been residing in the suit property as a licensee, therefore, liable to vacate the house in question.

The petitioner filed the written statement (Annexure P-2), denying that suit property is self-acquired property of defendant No.2 with

the averments that he joined Government service in the year 1997, received arrears of Rs.1,36,000/- that was spent on construction of the first floor of the property in question. It is further averred that the suit property is though enjoyed jointly by all being father and son but the first floor was constructed with the arrears received by the answering defendant. He claimed his possession of the suit property since the date of its re-allotment. He further claimed that the plaintiff is living along with defendant No.2 and his mother in house No.303, Sector 4, Gurgaon, joint Hindu family property being younger son and the answering defendant being the elder son is living in House No.128, Sector 4 (the property in question) and no partition whatsoever of the joint Hindu family of plaintiff and defendants has taken place. In para 4, it was reiterated that defendant No.1 is residing in House No.128 being the elder son and co-parcener of the joint Hindu family and the factum of being licensee is absolutely wrong and specifically denied.

The trial Court framed issues and permitted the parties to adduce evidence in support of their respective pleadings. After the parties had already adduced their evidence, the instant application was filed for amendment of the written statement in order to add the plea of ownership by way of adverse possession (by way of preliminary objection No.9) and the Civil Court decree dated 07.06.2012 in favour of the plaintiff being not properly stamped and, therefore, invalid, non-est, null and void and does not purport to transfer legal rights in favour of the plaintiff. The petitioner also sought to withdraw his admission with regard to the suit property being joint Hindu family property by alleging that the earlier admission that defendant No.1 along with his father and brother was in joint

enjoyment of the suit property was an erroneous mis-description of the nature of his possession over the suit property and departure of mere facts.

Having heard counsel for the parties, in the light of respective pleadings in the suit as well as the application and reply thereto, the trial Court dismissed the application with the observations that objections qua deficiency in stamp duty and insufficient registration charges are the points which can be raised and looked into by the Court even without present amendment under the ground of maintainability of the suit.

Counsel for the petitioner would submit that scope of amendment of written statement is much more liberal than that of a plaint and written statement can be amended to raise inconsistent plea. It is further argued that it is open for a party to explain and withdraw an admission by way of amendment. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India **Baldev Singh and others vs. Manohar Singh and others**, 2006(3) RCR (Civil) 844. Further reference has been made to judgment of this Court **Amar Singh vs. Nirmal Singh and another**, 2016(3) RCR (Civil) 192.

Another submission made by counsel is that in case the petitioner is permitted to amend the written statement by raising the plea of adverse possession, the petitioner does not intend to adduce any additional evidence, therefore, allowing the amendment would neither result in prolonging the decision nor would otherwise cause prejudice to the plaintiff/respondent for which he cannot be compensated with costs.

I have heard counsel for the petitioner, perused the paper-book particularly the order impugned.

It is an undisputed position of the case that the petitioner raised a categoric plea in the written statement that the suit property is the

joint Hindu family co-parcenary property and he being one of the co-parceners of the joint Hindu family consisting of his father and another brother is entitled to possess the property till the time there is partition of the joint Hindu family. Another plea raised by the petitioner is that construction of first floor of the suit property was raised with the funds received by him as arrears.

There cannot be any dispute about the settled position in law that amendment of a written statement stands on a better footing than that of a plaint and the defendant can be allowed to raise alternative/inconsistent plea both in the original written statement as well as by way of amendment. Even a party may be entitled to withdraw from his earlier admission by giving a tangible and satisfactory explanation.

In the case at hand, the petitioner in para 4 and 5 of the application has averred that earlier admission that defendant No.1 was a co-parcener and has been in joint enjoyment of the suit property along with his father and brother was erroneous, made out of mis-conception and unintentionally and against facts and evidence on the file. On a pointed query raised by the Court, counsel for the petitioner has fairly informed that the petitioner asserted his plea in this regard during the course of evidence by the respondent/plaintiff as well as his own evidence. Once the petitioner has taken a specific plea in the pleadings and even adduced evidence in support thereof, any such vague plea raised by him that the earlier admission was erroneous, result of mis-conception, unintentional and against facts and evidence is not at all sufficient to explain his position justifying withdrawal of his earlier admission by way of amendment. It appears, as a matter of fact that the present application was filed by the petitioner in order to derive advantage of some evidence that came on

record. The Court stands fortified in its observations from the plea put-forth in para 3 of the application wherein it has been averred that it has emerged in cross-examination of the plaintiff that he (plaintiff) had vacated the suit property, shifted to another house bearing No.33 (sic) Sector 4 along with his mother and father while defendant No.1 continued to reside in the suit property and it has also been stated that defendant No.1 paid no money to defendant No.2/previous owner for residing in the suit property. The plaintiff had locked the suit property while leaving, however, defendant No.1 had taken forcible possession of it.

As the petitioner has failed to tender any satisfactory explanation for withdrawal of his earlier admission coupled with the object sought to be served, I find myself unable to accept contention of the petitioner that he can be allowed to amend the written statement by taking advantage of what has been held by Hon'ble the Supreme Court of India in **Baldev Singh and others'** case (supra).

A careful reading of the written statement initially filed and the stand taken in the application for amendment filed at the fag end of the trial leaves no manner of doubt that application filed by the petitioner is bereft of bona fides. Though the learned trial Court has failed to consider this important aspect of the matter but that being so, the petitioner is not entitled to indulgence of this Court.

For the reasons aforesaid, the petition fails and is accordingly dismissed in *limine*.

OCTOBER 18, 2016

'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned :
Whether reportable :

yes/no
yes/no