

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

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Civil Revision No.7063 of 2016

Date of Decision: December 06, 2016

PIAR KAUR

-PETITIONER

VERSUS

JASWINDER SINGH

-RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Maninder Arora, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has assailed order dated 19.09.2016 passed by Civil Judge (Junior Division), Tarn Taran vide which application under Order 6 Rule 17 CPC filed by the petitioner for amendment of the written statement was dismissed.

Plaintiff-respondent filed a suit for declaration to the effect that order dated 21.08.2012 passed by Commissioner, Jalandhar, Division Jalandhar was illegal and the plaintiff was entitled to get the implementation of declaratory decree passed by Sub Judge, 1st Class, Tarn Taran. Declaratory decree dated 31.01.1984 passed by Sub Judge, 1st Class, Tarn Taran in civil suit No.1/1984 vide which plaintiff was declared to be owner in possession of land measuring 31 Kanal bearing Khasra Nos.584min South (1-0), 816 (8-0), 817min West (6-0), 825 (8-0), 826 (8-0) as per jamabandi for the year 1979-80.

Restraint order was also sought against the defendant seeking to restrain her from interfering in the possession of the plaintiff in respect of the suit land and also restraining her from creating any charge or encumbrance over the suit property.

An application for amendment of the written statement was filed by the defendant on the premise that she did not suffer any decree dated 31.01.1984 in the aforesaid suit nor she had appeared in any Court of law in any suit which was allegedly decreed on 31.01.1984. Defendant denied having made any statement in the said suit. She also denied the factum of any family settlement in respect of suit land rather claimed the suit land to be under her exclusive ownership. The right and claim of the plaintiff was denied in the suit land.

Defendant-petitioner also asserted that the plaintiff had made an illegal effort to get the mutation of ownership sanctioned in respect of suit land on the basis of alleged decree dated 31.01.1984. The suit was also claimed to be not maintainable. No part of the suit land was ever in possession of the plaintiff. It was alleged that the plaintiff brought the respondent to the Advocate namely Sh. Amarjit Singh Randhawa, Tarn Taran who before her arrival got some paper typed and without disclosing anything, the applicant was made

to sign the same. The contents of the papers were not disclosed to the defendant-petitioner and her signatures were obtained in a clandestine manner. Defendant denied having filed any written statement.

The defendant did not admit filing of any written statement and suffering of decree dated 31.01.1984 in favour of the plaintiff. Defendant-petitioner further alleged that later on, she came to know about the evil design of her son in getting her signatures fraudulently on the written statement and Power of Attorney in connivance with his Advocate. Petitioner-defendant denied having engaged Mr. Bikram Arora, Advocate for herself. The said proceedings were claimed to be the handy work of her son in collusion with her Advocate.

Though, the amendment of the written statement is to be liberally construed and the defendant can take inconsistent pleas by way of amendment in the written statement and can explain the circumstances in which admission was made by the defendant, but at the same time, it is also true that the defendant cannot be allowed to withdraw an admission made in the pleadings to dislodge the plaintiff to the hilt. The admission made in the pleadings cannot be allowed to be withdrawn by way of amendment in the written statement. The admission can only be clarified or explained in the substantive pleadings.

In view of ration laid down in **Ram Niranjana Kajaria vs Sheo Prakash Kajaria and others, 2015 (4) RCR (Civil) 580 Supreme Court**, the admission made in the pleadings cannot be allowed to be withdrawn by way of amendment.

In the instant case, the admission was made in a Civil suit dated 28.01.1984. After a period of 15 years, the said amendment in the written statement is sought to be withdrawn by way of amendment in the written statement. In other words, the defendant wants to resile from the admission after a period of 15 years when the decree dated 31.01.1984 had already attained finality. The defendant was well within her right to explain the circumstances in which the decree was passed on 31.01.1984, but the admission so made cannot be allowed to be withdrawn in the manner as suggested by the petitioner-defendant in the application for amendment of the written statement.

Learned counsel for the petitioner relied upon **Sushil Kumar Jain vs. Manoj Kumar and another, 2009 (3) RCR (Civil) 899** to contend that the admission in the pleadings can be withdrawn or explained by the party making it by way of amendment in question. The facts involved in the instant case are altogether different. The amendment in the written statement in the same process can be explained

instantaneously. In the present case, the admission was made about 15 years ago that too in a different suit. The said admission is sought to be withdrawn by way of proposed amendment, that too in a subsequent suit particularly when judgment and decree dated 31.01.1984 had already attained finality. The facts involved in **Sushil Kumar Jain's case (supra)** are altogether different. It is a settled principle of law that the amendment more particularly withdrawal of admission cannot be allowed to displace the case of the plaintiff altogether. Undisputedly, plaintiff is son of the defendant Piar Kaur. Plaintiff had obtained consent decree dated 31.01.1984 about 32 years ago. The decree was not implemented in the revenue record. The action of the revenue authorities is under scanner. The written statement has been again filed by the defendant, in the present case and the claim of the plaintiff has not been challenged. This admission is in consonance with the earlier admission made in the civil suit dated 31.01.1984 and now the said admission is sought to be withdrawn by way of proposed amendment in the written statement. A clear cut admission is sought to be withdrawn which was made in the previous litigation.

I am of the considered view that such a withdrawal of admission would clearly displace the case of the plaintiff

altogether and would also cause material and immense prejudice to the plaintiff. It is also a settled principle of law that all necessary amendments are to be allowed. The amendment of seeking withdrawal of admission in the case in hand cannot be allowed as it would definitely cause irretrievable prejudice to the plaintiff.

In view of aforesaid, I am of the view that no such prayer for amendment in the written statement can be allowed in view of facts as noticed above.

This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

December 06, 2016

jyoti Y.

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No