

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.3045 of 2017 (O&M)

Date of Decision: 26.9.2017

Harkirat Kaur and others

..Petitioners.

Vs.

Amarjit Kaur

..Respondent

CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL

Present: Mr.Sunny Singla, Advocate for the petitioners.

Ms.Poonam Verma, Advocate for the respondent.

REKHA MITTAL, J. (Oral)

The present petition directs challenge against order dated 11.4.2017 passed by the Civil Judge (Junior Division) Malerkotla whereby application filed by the petitioners under Order 6 Rule 17 of Code of Civil Procedure (in short `CPC') has been dismissed.

Counsel for the petitioners has submitted that respondent-plaintiff Amarjit Kaur has filed a suit for declaration in regard to suit property, detailed in head note of the plaint (Annexure P-1) claiming herself to be widow of deceased Jaswant Singh. The petitioners/defendants filed written statement (Annexure P-2) wherein they have denied the respondent-plaintiff to have performed marriage with Jaswant Singh in the year 1987 or having any concern with deceased Jaswant Singh. Due to typographical error, in para 4 of the written statement in opening lines, it is mentioned that husband of the plaintiff Jaswant Singh died on 9.3.2014. It is argued with vehemence that reading of the entire written statement would substantiate

is the result of typographical mistake when otherwise the petitioners have categorically denied the respondent to be widow of Jaswant Singh. It is further argued that the learned trial Court without appreciating the averments raised in the written statement in its entirety has wrongly recorded a finding that the petitioners intend to withdraw from the admission made in para 4 of the written statement and the same cannot be allowed in view of the judgment **Gannmani Anasuya and others Vs. Parvatini Amarendra Chowdahary and others 2007(3) Civil Court Cases 248 (SC)**.

Counsel for the respondent-plaintiff has supported the impugned order with the submission that the petitioners tried to deny relationship of the respondent with Jaswant Singh (since deceased) but pleaded the truth by making an admission in para 4 of the written statement, therefore, the trial Court has rightly held that the petitioners cannot be allowed to withdraw from their admission by way of amendment. Another submission made by counsel is that application for amendment of the written statement was filed 8 months after the original written statement was filed in the Court.

I have heard learned counsel for the parties and perused the paper book particularly the various Annexures appended with the petition.

It is undisputed position of the case that dispute between the parties is with regard to inheritance to the estate of Jaswant Singh who died on 9.3.2014. The respondent-plaintiff has claimed herself to be widow of Jaswant Singh on the premise that they performed marriage in the year 1987. Harkirat Kaur, petitioner No.1 has asserted her claim of inheritance to Jaswant Singh by alleging that she performed marriage with Jaswant Singh

in the year 2000 and three children petitioners No.2 to 4 were born out of the wedlock of Jaswant Singh and petitioner No.1. Perusal of the written statement (Annexure P-2) would make it apparent that in para 1 of the written statement, the petitioners have categorically denied the factum of marriage of the respondent and Jaswant Singh or the two of them having resided as husband and wife. It has also been pleaded that the respondent-plaintiff had no concern with deceased Jaswant Singh.

Para 4 of the written statement wherein the alleged admission is stated to be made by the petitioners, reads as follows:

“That para No.4 of the plaint is admitted to extent that the husband of the plaintiff Jaswant Singh died on 9.3.2014, rest of the para is wrong and denied. It is wrong that the applicant is only legal heirs of deceased Jaswant Singh. On the contrary, the plaintiff has got no concern with the deceased Jaswant Singh.”

Even in para 4 in the concluding lines, the petitioners have denied that the respondent is only legal heir of deceased Jaswant Singh or she has got any concern with deceased Jaswant Singh. The averments raised in different paras of the written statement as well as the averment in the concluding lines of para 4 substantiate pleas of the petitioners that the alleged admission in the opening lines of para 4 is the result of typographical mistake and the same can be allowed to be corrected by way of amendment. In this view of the matter, findings recorded by the trial Court that the petitioners wanted to withdraw from the admission, by way of amendment are not well founded and cannot stand the test of judicial scrutiny. In view of the above, the application filed by the petitioners for amendment of the written statement in order to amend one line in para 4 of written statement, appears to be meritorious and can be allowed.

For the foregoing reasons, the petition is allowed and the impugned order is set aside. The application filed by the petitioners for amendment of the written statement is allowed subject to payment of costs of Rs.10,000/- to the respondent. However, nothing stated herein shall be construed as an expression of opinion regarding rival claims of the parties, to be decided by the trial Court on the basis of evidence to be adduced by them.

26.9.2017
Meenu

(Rekha Mittal)
Judge

Whether speaking/reasoned - Yes/No
Whether Reportable - Yes/No