

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3515 of 2013 (O&M)

Date of Decision: 22.11.2017

Usha Thareja and others

.....Petitioners

Versus

Ravinder Partap Thareja and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. O.P.Hoshiarpuri, Advocate
for respondents No. 1 to 6.

ANITA CHAUDHRY, J

Challenge in this petition is to the order dated 2.5.2013 passed by the Additional Civil Judge (Senior Division), Jalandhar who dismissed the application filed by petitioner No. 1 seeking permission to sign and verify the written statement.

On the last date of hearing, respondents No. 1 to 6 were directed to place on record the replication, if any to the written statement filed by petitioner No. 1. Copy of the same has been made available and is ordered to be placed on record.

Counsel for the petitioners submits that the dispute is between the brothers and sisters with respect to the estate left by their father Sh. Chetan Das Thareja. He contends that a suit for separate possession by way of partition was filed and the plaintiffs were relying upon a Will of 1986. The counsel contends that the suit was filed against N.P. Thareja defendant No. 1 and he had filed the written statement on 10.1.2008 but

died three months later in April 2008. Counsel further contends that the

plaintiff moved an application seeking to amend the plaint and incorporate the factum regarding the Will and the Court had permitted it vide order dated 31.7.2009. The counsel further contends that thereafter an amended written statement was to be filed by defendant No. 1 and the same was filed by their earlier counsel and the trial proceeded and it was at the stage of rebuttal that the mistake came to their notice that the written statement was not signed by the legal heirs of N.P.Thareja and the affidavit of his wife whose name is Usha Thareja had not been filed and instead the written statement was signed by one Veena and the affidavit shows Veena as widow of N.P.Thareja and it was a mistake apparently in the office of the counsel. The counsel further contends that no objection had been taken in the replication filed by the plaintiffs and this escaped their notice as well and when this fact came to their notice they filed an application to rectify the mistake and sought permission to sign the written statement and verify the contents but it has been rejected. It was urged that the plaintiffs did not dispute that Usha Thareja is the wife of late N.P.Thareja and it is not their case that Usha was also known as Veena and the lower Court on assumption had observed that it was one Veena who was alleging herself to be the wife of N.P.Thareja and it is Usha Thareja who is now asserting herself to be the wife and she could not be allowed to sign the written statement. The counsel further submits that it is a curable defect and can be cured even at the stage of the appeal with permission of the Court and they have no intention to change the contents of the amended written statement they want to sign. The same written statement filed already. Reliance was placed upon *Ismail Khan versus Bir Singh and another 2016(1) R.C.R. (Civil) 135, Anantha*

Harbhajan Singh versus Mohan Singh 1993(1) R.R.R. 309.

The submission on the other hand is that had it been a mistake on the part of the counsel then the petitioners would have duly obtained the affidavit of the Lawyer and if the written statement is not signed it cannot be read as such and the petitioners have failed to prove due diligence.

The facts as they have been placed before this Court are that defendant No. 1 has filed his written statement which was duly signed by him. Defendant No. 1 died three months later. It is not disputed that the plaintiffs filed an application to bring the factum of a Will in their plaint which had been allowed in July 2009. The case was adjourned for filing the written statement to the amended plaint and the written statement was filed but it was signed by Veena. Except for the name, there is no other detail. Along with the written statement, an affidavit was also appended which again said Veena wife of N.P.Thareja. The plaintiffs did not dispute that N.P.Thareja's wife is Usha Thareja. It is not in dispute that Usha Thareja is not known by the name of Veena.

As claimed by the petitioners, the error came to their notice at a very late stage of the trial and they were wanting to sign the written statement already on record at the stage of rebuttal evidence. The issue under consideration would thus be whether at a later stage of the case, legal heir of defendant no.1 can be permitted to sign the amended written statement already filed when the case is at the last stages. A similar issue arose in ***Uday Shankar Triyar versus Ram Kalewar Prasad Singh, 2006(1) R.C.R. (Civil) 18.*** The Apex Court had observed that if the plaint or the written statement is not signed by a party on account of a bona fide error

then the defect can be rectified either by the trial Court or at any time before

the judgment and even by the Appellate Court provided the conditions laid down there were fulfilled.

In the present case there appears to be a bona fide error in the office of the Lawyer representing defendant No. 1. The defect could not be noticed by the plaintiffs otherwise they would have taken an objection in their reply. It is at a later stages that it came to the notice of defendant No. 1 and they moved an application and the mistake could be rectified. In my opinion, the rejection of the prayer to sign the written statement and to file the affidavit in support thereof was erroneous and the order deserves to be set aside.

For the reasons mentioned above, the impugned order is set aside. Petitioner No. 1 is permitted to sign the written statement already filed and it would be signed in the Court on 01.12.2017. The petitioner no.1 can also file the affidavit in support thereof.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

November 22, 2017

Gurpreet/Sunil

Whether speaking/reasoned : Yes

Whether reportable : No