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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 1159/2017**

GURCHARAN KAUR & ORS Petitioners

Through: **Mr. V.S. Dubey, Adv.**

Versus

RANJEET SINGH SANDHU Respondent

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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23.10.2017

CM No.37739/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 1159/2017 & CM No.37738/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 6th September, 2017 in CS No.13100/2016 of the Court of Additional District Judge (ADJ)-13 (Central), Tis Hazari Courts, Delhi] of dismissal of the application of the petitioners/defendants under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the written statement.
4. The counsel for the petitioners/defendants has been heard.
5. The respondent/plaintiff, in or about 2007 instituted the suit from

which this petition arises for recovery of possession of immoveable property and for ancillary reliefs, pleading (i) that the father of the respondent/plaintiff was the owner of the said immoveable property and died leaving, besides the respondent/plaintiff, his two brothers namely Sripal Singh and Gurmeet Singh and one sister namely Gurminder Jeet Kaur; (ii) that the immoveable property aforesaid was partitioned between the respondent/plaintiff and his siblings vide partition deed dated 9th August, 1980; (iii) that the respondent/plaintiff was residing at Canada and could not manage his share in the aforesaid property and had executed a General Power of Attorney (GPA) dated 25th March, 1983 in favour of the petitioner/defendant No.1 being the wife of Sripal Singh aforesaid, authorising the petitioner/defendant No.1 to execute the release deed and Relinquishment Deed of the respondent/plaintiff's share in the property in favour of the said Sripal Singh being the petitioner/defendant No.2; (iv) that the respondent/plaintiff came to know that the petitioner/defendant No.1, till 15th May, 2007, acting under the said GPA had not executed any release deed / Relinquishment Deed in favour of her husband Sripal Singh; (v) thus, the petitioner/defendant No.1 till 15th May, 2007 remained the owner of his aforesaid portion of the property; (vi) that the respondent/plaintiff vide the revocation deed dated 15th May, 2007 revoked the GPA in favour of the petitioner/defendant No.1 and informed the petitioner/defendant No.1 of the same; (vii) that the petitioners/defendants No.1&2 and their children being petitioners / defendants No.3&4 however, inspite of being called upon, did not deliver possession of the portion of the

property to the respondent/plaintiff and hence the suit.

6. The petitioners/defendants contested the suit by filing a written statement dated 9th October, 2008 *inter alia* pleading (a) that the respondent/plaintiff had executed the GPA authorising petitioner/defendant No.1 to execute the Relinquishment Deed of the respondent/plaintiff's share in the property, in terms of an oral Family Settlement of the year 1981/1982; (b) that the petitioners/defendants were advised that in view of the Family Settlement, there was no need for execution of a Relinquishment Deed; (c) that the petitioner/defendant No.1 acting under the GPA aforesaid had on 24th July, 1985, executed a memorandum recording in writing the terms of the oral Family Settlement of 1981/1982 whereunder the respondent/plaintiff had orally released and/or relinquished his share in the property in favour of the petitioner/defendant No.2; (d) that the petitioner/defendant No.2 was in settled exclusive possession of the property in terms of the oral Family Settlement of 1981/1982.

7. The petitioners/defendants, after nearly nine years from the date of filing of the written statement aforesaid, in or about September, 2017 filed the application aforesaid for amendment of the written statement, against dismissal whereof this petition has been preferred, pleading (I) that the petitioner/defendant No.1, acting under the GPA aforesaid admittedly executed by the respondent/plaintiff, had on 13th February, 1985 executed and registered a Relinquishment Deed in favour of the petitioner/defendant No.2; (II) that on execution of the said Relinquishment Deed, the

respondent/plaintiff ceased to have any share or right in the property; (III) that the petitioners/defendants No.1&2 are suffering from various ailments and did not remember the factum of execution and registration of the Relinquishment Deed on 13th February, 1985 and learnt of the said Relinquishment Deed only while searching the record of the Sub-Registrar with respect to a sale affected by the respondent/plaintiff of a portion of the property in favour of another.

8. The learned ADJ has vide the impugned order dismissed the said application reasoning (A) that no reason had been stated as to why Relinquishment Deed was not pleaded in the written statement as earlier filed, (B) that non-mentioning of the aforesaid fact was being imputed to forgetfulness of the petitioners/defendants No.1&2 but the said explanation was not digestible for the reason that when the written statement was filed, the memory of the petitioners/defendants No.1&2 must have been sharper than what it is today; (C) rather, at the time of filing of the written statement, the petitioners/defendants expressly pleaded that there was no registered Relinquishment Deed; (D) that the petitioners/defendants could not be permitted to withdraw the said admission and take a somersault; (E) that the suit was ten years old and in accordance with the directions of the National Court Management Systems Committee of the Supreme Court and State Court Management Systems Committee of this Court, required to be disposed of expeditiously.

9. The counsel for the petitioners/defendants has reiterated the

aforesaid.

10. Though the document which is now sought to be pleaded is a registered document but the possibility of it having been fabricated and the records of the Sub-Registrar having been tampered, cannot be ruled out. It is rather strange that the petitioners/defendants, in the memorandum dated 24th July, 1985 of oral Family Settlement, pleaded in the written statement as originally filed, to have been contemporaneously executed, did not mention the factum of the registered Relinquishment Deed dated 13th February, 1985. Though the copy of the said memorandum stated to be produced before the Suit Court along with the written statement was not filed with the paper book of this petition but the counsel for the petitioners/defendants on asking has handed over the same in Court and is taken on record. A perusal thereof confirms that the same proceeds on the premise that there is no registered Relinquishment Deed.

11. Though the petitioners/defendants No.1&2 in their later years can be believed to be having failing memory on account of age but the petitioners / defendants, had any Relinquishment Deed been executed and registered on 13th February, 1985, could not have forgotten about the same while executing the Memorandum of Family Settlement, within 5-6 months therefrom, on 24th July, 1985. There is absolutely no explanation in this regard. I may also mention that in the Relinquishment Deed, there is no mention of any oral Family Settlement of 1981/1982 as is to be found in the Memorandum dated 24th July, 1985.

12. The suit of the respondent / plaintiff, for recovery of possession of immovable property, is on the premise of respondent / plaintiff being the owner and though at one time having intended to relinquish his share in the property in favour of petitioner / defendant No.2 but having not done so. The petitioners / defendants in their written statement admitted that no Relinquishment Deed had been executed but pleaded the petitioner / defendant No.2 to have become owner under an oral Family Settlement. The onus to prove such a Family Settlement would be on the petitioners / defendants and on petitioners / defendants failing to prove the same, the respondent / plaintiff will succeed in the suit. Allowing the petitioners / defendants to amend the written statement, to now plead a registered Relinquishment Deed would take away the valuable right aforesaid which has already accrued to the respondent / plaintiff and displace the respondent / plaintiff. Allowing the amendment also amounts to the petitioners / defendants, by way of amendment, substituting a new and different defence than taken in written statement earlier filed and which is impermissible. A three Judge Bench of the Supreme Court, in *M/s Modi Spinning & Weaving Mills Co. Ltd. Vs. M/s Ladha Ram & Co.* (1976) 4 SCC 320 held that a defendant cannot be permitted to change completely the defence earlier pleaded and to substitute it with entirely different and new defence.

13. In *Gautam Sarup Vs. Leela Jetly* (2008) 7 SCC 85, it was held that an admission made in a pleading is not to be treated as an admission in a

document. An admission made by a party to the *lis* was held to be admissible against him *proprio vigore* i.e. on its own force.

14. The Division Bench of this Court in ***Kali Charan Vs. Ishwar Dass*** 2002 (61) DRJ 401 was concerned with an application for amendment of written statement in a partition suit. In the written statement filed, the plaintiff was admitted to be having a share in the property. Subsequently by amendment, the said admission was sought to be withdrawn relying on a Will and/or orders of Courts in earlier proceedings which were decided against the predecessor in interest of plaintiff and by stating that the previous counsel had in ignorance of true facts, documents, orders and judgments of Court, made the admission. Holding, that the defendant wanted to change admission already made of share of plaintiff in the property, to a denial of any share of plaintiff in the property and that the same would change the nature of defence and totally non-suit the plaintiff, the amendment was denied. It was held that the defendant cannot deprive plaintiff of the valuable right which had accrued from admission in written statement.

15. It would thus be seen that even where the admission made in the pleading was inconsistent with documents, orders and judgments of Court in earlier proceedings, it was still not permitted to be withdrawn.

16. Supreme Court, comparatively recently in ***Ram Niranjan Kajaria Vs. Sheo Prakash Kajaria*** (2015) 10 SCC 203, reiterated that amendment, to resile from admission, cannot be permitted and that a party cannot be

permitted to wholly withdraw the admission in pleadings. It was reiterated that admission in pleadings or judicial admissions, admissible under Section 58 of the Indian Evidence Act, 1872, made by the parties, stand on a higher footing than evidentiary admissions and are fully binding on the party that makes them and constitute a waiver of proof. It was held that admissions in pleadings can be made foundation of rights of parties.

17. No error requiring interference is thus found in the view taken by the learned ADJ, of the plea sought to be taken now by way of amendment at the stage of recording of evidence, being in withdrawal of admissions already made in the written statement and changing the very nature and character of the defence in the written statement as originally filed.

18. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 23, 2017

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