

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

Civil Revision No.6045 of 2017 (O&M)
Decided on:-April 06, 2018.

Bhim Sain and another

.....Petitioners.

Versus

Pankaj Rai.

.....Respondent.

CORAM: *HON'BLE MR. JUSTICE HARI PAL VERMA.*

Present:- Mr. Ashok Bhardwaj, Advocate for
 Mr. Pritpal Singh Miglani, Advocate
 for the petitioners.

None for the respondent.

HARI PAL VERMA, J.

The petitioners have filed the present civil revision under Article 227 of the Constitution of India for setting aside the order dated 09.08.2017 (Annexure P-5) passed by learned Civil Judge (Junior Division), Ludhiana, whereby the application filed by the petitioner-defendants under Order VI Rule 17 read with Section 151 CPC for amendment of the written statement, was dismissed.

Briefly stated, the respondent-plaintiff had filed a suit for possession by way of specific performance of an agreement to sell dated 04.06.2009 with regard to the suit property, as detailed in the plaint.

The petitioner-defendants had filed a joint written statement on 14.12.2015 with an averment that the alleged agreement to sell in favour of

the plaintiff is false and fabricated one. In fact, the plaintiff was in possession of the property in question as a tenant. The defendants had filed an ejectment petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, wherein the ejectment order was passed against the plaintiff on 31.07.2015. Since then, the plaintiff is in illegal possession of the suit property. It was further pleaded that the defendants availed a loan of Rs.2,50,000/- from the plaintiff which has been repaid. Thus, the defendants had denied the execution of the agreement to sell dated 04.06.2009, as averred in the plaint. However, ownership of the defendants over the suit property was admitted.

While the suit was pending, the petitioner-defendants moved an application under Order VI Rule 17 read with Section 151 CPC for amendment in the written statement. It was pleaded in the application that the defendants want to include preliminary objections No.9 to 16, which read as under:

- “9. That Bhim Sain was not owner at the time of alleged agreement dated 4.6.2009.*
- 10. That the defendant No.1 is running Karyana Shop for the last many years.*
- 11. That the defendant No.2 is running P.G. on the 1st Floor of the property in dispute. It is only residence and business place of the defendants.*
- 12. That the alleged photocopy of the alleged agreement dated 4.6.2009 did not bear the signature of the defendants.*

13. *That the matter was reported to police and the plaintiff compromised the same.*
14. *That the defendant No.1 cannot sell the property as he is not owner of the property.*
15. *That the defendant No.1 transferred the property on 1.6.2009.*
16. *That the description of the property is totally false and wrong. The site plan is wrong.”*

It was further pleaded in the application that the defendants want to amend the written statement on merits as well, which read as under:

“That the defendant wants to amend the 1st line of para No.1 on merits i.e. ‘Para No.1 of the plaint is admitted to the extent of ownership of the defendants over the suit property’ with ‘Para No.1 of the plaint is wrong and denied. Moreover, the defendant No.2 is owner in possession of property in dispute’.”

Reply to the aforesaid application was filed by the respondent-plaintiff pleading therein that the defendants cannot be allowed to withdraw the admission made by them as they have admitted themselves to be owners of the suit property in their joint written statement. But through the instant amendment, they seek withdrawal of their admission which cannot be allowed. The defendants were already in knowledge of the agreement to sell dated 04.06.2009.

Vide impugned order dated 09.08.2017, the application under Order VI Rule 17 read with Section 151 CPC for amendment of the written statement was dismissed by learned civil Court.

Aggrieved against the aforesaid order dated 09.08.2017 passed by the civil Court, the petitioner-defendants have filed present civil revision.

Learned counsel for the petitioner-defendants has contended that the civil Court has dismissed the application for amendment of the written statement on the plea that the proposed amendment will set up a different, new and inconsistent case. But as vide transfer deed dated 01.06.2009 registered on 02.06.2009, the defendant No.1 had already transferred the suit property in favour of defendant No.2 and the plaintiff was having the knowledge of this fact, therefore, the defendant No.1 was not competent to execute any agreement to sell on 04.06.2009 in favour of the plaintiff.

He has further contended that the proposed amendment is necessary so as to go to the root of the case. It would not change the nature of the case, rather, it would facilitate the just decision of the case and would not cause any prejudice to the plaintiff.

Nobody is present on behalf of the respondent-plaintiff.

I have heard learned counsel for the petitioner-defendants.

By way of proposed amendment, the petitioner-defendants intend to seek amendment in the written statement by incorporating the fact that as on date i.e. 04.06.2009 when the alleged agreement was executed between defendant No.1 and the plaintiff, the defendant No.1 was not the owner of the suit property. However, in the joint written statement filed by the defendants before the civil Court on 14.12.2015, it was averred that the plaintiff was in possession of the suit property in the capacity of a tenant and the defendants had filed an ejectment petition under Section 13 of the East Punjab Urban

Rent Restriction Act, 1949, wherein the ejectment order was passed against the plaintiff on 31.07.2015 and since then, the plaintiff is in illegal possession of the suit property. In the said joint written statement, the defendants have outrightly admitted themselves to be owners of the suit property.

Thus, on the date i.e. 14.12.2015, when the written statement was verified, the factum of transfer deed dated 01.06.2009 (registered on 02.06.2009) executed between the defendant No.1 and defendant No.2 was very much in their knowledge, but it was not pleaded by them in their joint written statement for obvious reasons. Therefore, in case the proposed amendment is allowed, it would lead to withdrawal of admission made by the defendant No.1 in his original written statement filed along with defendant No.2.

Thus, this Court finds that by way of proposed amendment, the petitioner-defendants intend to withdraw their admission to ownership of the suit property, which the law does not permit. It is settled law that the admission once made cannot be withdrawn. When the petitioner-defendant No.1 was aware of the fact that he was no more owner of the suit property, as he had already transferred it to the petitioner No.2 on 01.06.2009, but still while filing the written statement on 14.12.2015, he has admitted himself to be owner of the suit property, cannot be permitted to withdraw his admission. Therefore, no interference is warranted in the impugned order dated 09.08.2017 passed by the civil Court by invoking the revisional jurisdiction of this Court.

Accordingly, the impugned order dated 09.08.2017 passed by the civil Court is affirmed and the instant civil revision, being devoid of any merit, is dismissed.

April 06, 2018
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No