

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

Date of decision: 04.04.2018

CR No.8668 of 2016

Bashir (deceased) th. LR Jakir Hussain & ors. ... Petitioners

versus

Mohd. Jameel & anr. ... Respondents

CR No.8669 of 2016

Bashir (deceased) th. LR Jakir Hussain & ors. ... Petitioners

versus

Mohd. Jameel & anr. ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Alok Mittal, Advocate
for the petitioners.

Mr. R.S.Hooda, Advocate
for the respondents.

Amit Rawal, J(Oral)

This order of mine shall dispose of two revision petitions bearing Nos.8668 and 8669 of 2016. For the sake of brevity, the facts are being taken from CR No.8668 of 2016.

The present revision petition is directed against the order dated 30.01.2016 whereby the application for amendment of the written statement at the instance of the petitioner-defendant for causing amendment in para 2 of the written statement, has been declined.

Mr. Alok Mittal, learned counsel appearing on behalf of the petitioner-defendant submitted that respondents-plaintiffs instituted the suit for specific performance of the alleged agreement to sell dated 15.10.2012

in pursuance of the receipt of the notice, the petitioner-defendant filed a written statement by denying the execution of the agreement to sell and also stated that it was a result of undue influence fraud having been played, in collusion with the stamp vendor, scribe and witnesses. But by way of amendment the petitioner-defendant wanted to incorporate two lines in para No.2, which is elaborative, explanatory for, that the amendment pertains to the fact that the defendant is an educated, literate person and knows how to put the signatures and therefore, agreement to sell could not be bearing his thumb impression. The amendment would not tantamount to withdrawal of the admission. The application for amendment was filed at the stage where the trial had not commenced and thus, urges this Court to set aside the order.

Mr. Hooda, learned counsel appearing for the respondent -plaintiff submitted that the entire stand taken in the un-amended written statement was being withdrawn by seeking an amendment in para 2, which is not permissible in law. When there was admission that he signed in pressure but now the said plea has been withdrawn, therefore, the trial Court rightly rejected the application and urges this Court for dismissal of the petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in submissions of Mr. Alok Mittal. For the sake of brevity, para 2 of the amended written statement is reproduced below:

“That para No.2 and its sub para (a) to (c) of the plaint are wrong and denied. It is denied that the total sale price was settled in the sum of Rs.7,03,125/- or that the plaintiff paid the alleged sum of Rs.6,98,125/- to the defendant as alleged. It is

denied that the remaining alleged sale price was to be paid at the time of execution of the sale deed or that the sale deed was to take place on or before 20.09.2013 as alleged. The other alleged terms and conditions mentioned in this para are wrong and denied specifically. It is submitted that the defendant had never entered into the alleged agreement with the plaintiff and he had not executed the same in favour of the plaintiff. The said alleged terms had never been settled between them. The alleged agreement dated 05.11.2012 if any is the result of fraud, misrepresentation and undue influence exercised by the plaintiff and the same has been got prepared in collusion with the stamp vendor scribe and witnesses etc. with the ulterior motive to grab the suit land and to cause loss and injury to the defendant. There was no necessity or reason to sell out the suit land and he had never received the alleged sum from the plaintiff. The plaintiff had no capacity to pay such huge amount to the defendant and to purchase the land. The value of the land was more than Rs.15 lacs per acre at the time of the alleged date of agreement and as such, no question to execute or sell out the suit land to the plaintiff did not arise. It is submitted that the plaintiff is the nephew of the defendant. The defendant was educated, literate person and he was in service and he had always put signatures and he did not put thumb impressions. In fact, the said both alleged agreements do not bear the thumb impression or signatures of defendant and the same are forged, fabricated, bogus and have been prepared by way of impersonation. The said son of defendant namely Habibullah was inimical towards the defendant and answering sons of the defendant and he had evil eyes on the property of defendant. The said alleged agreement and the other agreement involved in the other suit are the result of conspiracy and collusion of the said Habibullah and plaintiff with their other henchmen with the ulterior motive to grab the land and to deprive the defendant and answering defendants.

The said both the agreements in question are not legal and enforceable in the eyes of law and the answering defendants are not bound by the same. The photograph affixed on the agreements in question have also been obtained by plaintiff in collusion with Habibullah.”

On going through para 2 of the un-amended written statement and the amended written statement, they are almost similar with the previous pleas except two lines that the defendant is an educated person and was in service and, therefore, he know how to put his signatures and did not put the thumb impression. Such amendment, in my view, is explanatory and elaborate and would not tantamount to withdrawal of admission. The Court below has committed illegality in not appreciating the aforementioned amendment for the purpose of striking the balance. Resultantly, the impugned order is not sustainable as it suffers from illegality and is without jurisdiction, the same order is hereby set aside. The application for amendment of written statement is allowed.

The petitioner is allowed to file the amended written statement within a period of three weeks from the date of receipt of the certified copy of this order and, thereafter the respondent-plaintiff is also permitted to file replication to the amended written statement. Since the issues have already been framed that will be looked into if necessity arises from the stage it had been stayed for .

Accordingly, both the revision petitions stand allowed.

04.04.2018

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(AMIT RAWAL)

JUDGE

Whether speaking/non-speaking?

Yes/No

Whether reportable?

Yes/No