

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

CR no.8684 of 2017

Date of Decision: 05.04.2019

Simarjit Kaur

...Petitioner

Vs.

Nidhan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Lalit Pathak, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order dated 10.08.2017 passed by the learned trial court (Additional Civil Judge, Jr. Divn., Nabha), whereby her application filed under Section 151 of the Code of Civil Procedure, 1908, seeking restoration of the suit against defendant No.22, Nidhan Singh, has been dismissed, on the ground that the petitioner along with her co-plaintiffs, themselves had withdrawn the suit *qua* him, unconditionally.

In an order passed by this Court on 16.11.2018, it had been recorded as follows:-

“...Learned counsel would place on record a certified copy of the plaint filed in the suit out of which this petition arises, to show whether any prayer has been made seeking to declare the aforementioned agreement dated 13.3.2013 to be null and void and not binding upon the petitioner and her co-plaintiffs.

Adjourned to 30.11.2018.”

Today learned counsel for the petitioner points to the fact that the statement shown to be recorded on 14.07.2016 by the trial court (copy Annexure P-3), withdrawing the suit against Nidhan Singh, was actually a statement dictated by the court in English, though signed by the petitioner and others in *Gurumukhi*.

He further submits that even an affidavit (a joint affidavit shown to be executed by her along with others on 13.03.2013), was simply a document signed in good faith, and that as a matter of fact no consideration was passed by Nidhan Singh to the petitioner and those who signed the affidavit along with her, for compromising the matter.

Upon the affidavit dated 13.03.2013 having been filed, the statement of the petitioner, recorded on 14.07.2016 by the trial court, is seen to be signed by the petitioner (Simarjit Kaur), Jasbir Kaur, Gurmit Kaur and Satwant Kaur, with the right thumb impression of Kulwant Singh also seen on it.

The said statement reads as follows:-

“Statement of Satwinder Kaur, Jasbir Kaur, Simarjit Kaur, Kulwant Kaur and Gurmeet Kaur daughters of Gurdeep Singh s/o of Kesar Singh plaintiffs on SA.

Stated that the we have compromised the matter with the defendant no.22 Nidhar Singh s/o Rajinder Singh r/o Village Mehs. The sale deeds out of the suit property executed and registered in favour of defendant No.22 Nidhan Singh are valid, genuine and value for consideration. Similarly the sale deed executed in favour of the mother of Nidhan Singh, namely Narinder Kaur w/o Rajinder Singh is also valid, genuine and value for consideration. We have no objection regarding the sale deeds. The above said persons namely Nidhan Singh and Narinder

Kaur are the exclusive owner in possession of the property covered in the said sale deeds. We have no objection regarding the said sale deed. We will never challenge the said sale deed in future. According to the compromise we withdraw the suit against Nidhan Singh defendant No.22. My suit is liable to be dismissed as withdrawn against the defendant No.22 Nidhan Singh.”

Thereafter, the impugned order has been passed on August 10, 2017, upon an application filed by the petitioner and others for restoration of the suit against defendant no.22, i.e. Nidhan Singh (against whom it had been withdrawn), vide the statement made on July 14, 2016.

It has been stated by the learned trial court while dismissing that application, as follows:-

“Perusal of files shown that plaintiffs had given detailed statement that they have compromised the matter with defendant No.22 Nidhan Singh and admitted the sale deed registered in favour of defendant no.22 Nidhan Singh as well as his mother. There was no condition in the said statement of payment to be made by defendant No.22. In the application the plaintiffs pray that defendant No.22 has not paid any amount to the plaintiffs but there was no mention of liability of the defendant No.22 to make any payment in the statement recorded on 14.07.2016. Hence there is no ground to allow the application under Section 151 CPC to restore the suit against defendant No.22 when plaintiffs had withdrawn the suit qua him un-conditionally. As such, application is dismissed. To come up on date fixed.”

Learned counsel for the petitioner reiterates that a fraud having been played upon the petitioner and her co-plaintiffs, with no consideration having been passed, either for the suit land, or to compromise the matter, Nidhan Singh has simply taken advantage of them having made the statement before the trial court, and therefore the application for restoration

of the suit *qua* him actually deserved to be allowed.

He further submits that the petitioners' counsel was Shri V.P. Shukla, Advocate, whereas the application filed for recording the statement of the plaintiff (seeking to withdraw the suit against defendant no.2, Nidhan Singh), is seen to be so filed through Sh. S.S. Rai, Advocate, (which is a document annexed as Annexure P-5 with the application numbered as CM no.734-CII of 2018 in this petition).

He submits that Sh. Rai is an associate of Sh. Makhan Singh, Advocate, who was counsel for the aforesaid Nidhan Singh.

As regards Sh. Makhan Singh being counsel for the aforesaid Nidhan Singh, he points to the impugned order, wherein it is so recorded, and to show that Sh. S.S. Rai is an associate of Sh. Makhan Singh, he points to Annexure P-9 annexed with CM no.24230-CII of 2018. The said annexure comprises of two instruments granting a power of attorney (in a printed form) to Sh. Makhan Singh, Advocate and Sh. S.S. Rai, Advocate (in different cases).

Having considered the matter, it is first to be noticed that in the impugned order, the learned trial court has observed that the plaintiffs (petitioner and her co-plaintiffs) had made a detailed statement to the effect that they had compromised the matter with defendant no.22, Nidhan Singh, and had admitted the sale deed registered in his favour as well as in favour of his mother. The order further states that there was no condition imposed in the statement, that any payment was to be made by defendant no.22.

In my opinion, the contention of the learned counsel for the petitioner, that because the application seeking that the statement of the petitioner and her co-plaintiffs be recorded for withdrawal of the suit against Nidhan Singh, was an application filed by a counsel who was an associate for the counsel for Nidhan Singh, and therefore the statement itself is vitiated, is not a contention that can be accepted, because the statement of the petitioner and her co-plaintiffs was actually duly recorded by the trial court.

Though obviously what is recorded on 14.07.2016 seems to be a simultaneous translation of what was stated by them in Court (because undoubtedly the petitioner and her co-plaintiffs had signed in *Gurumukhi/Punjabi* and not in English, with one of the plaintiffs having affixed his thumb impression on the statement), yet the recording being that of the trial court itself, of the statements made before it, and the petitioner does not actually deny making the statement withdrawing the suit *qua* Nidhan Singh, it makes no difference as to through which counsel it was filed.

Of course, had the petitioner denied making the said statement before the trial court, the matter would have been different because in that case it could have been possibly presumed by this court that there could have been an error in translation of what the petitioner wished to convey to the court in her statement and what was recorded. However, factually it is not denied that the statement was made by the petitioner, withdrawing the suit against Nidhan Singh. Her contention now is that she has been

defrauded by Nidhan Singh because after a compromise no amount was given to her by him. Thus, what she stated before the court is not actually denied by her. It is also stated on her behalf that since the counsel who had filed her application seeking to withdraw the suit *qua* Nidhan Singh, was a counsel who was an associate of Nidhan Singhs' Advocate, she has been defrauded. Whereas that would also seem to be correct, however, to repeat, she has not denied withdrawing the suit against him. What seems to be very obvious is that she expected some money from Nidhan Singh for withdrawing the suit, which however was not given to her, or possibly there was short fallen in the money promised.

However, in my opinion, as regards the question of any consideration of the suit land, the sale deed executed by the petitioners' father in favour of Nidhan Singh and his mother, is admitted to be containing a recital that consideration was received by her father for the sale. Her father never challenged the sale deed on the ground that he had not been paid consideration and that a fraud was played upon him.

Therefore, I find no reason to interfere with the impugned order, because even if it is accepted by this Court that no consideration was paid by Nidhan Singh to the petitioner and her co-plaintiffs, firstly, the other plaintiffs have no grievance against withdrawal of the suit *qua* him, they not having filed any revision against the order impugned in the present revision; and further (as correctly noticed by the trial court), there being no condition

put by the petitioner at the time of withdrawal of the suit, she cannot thereafter start imposing a condition retrospectively.

The suit of the petitioner, as per what learned counsel has submitted before this court, is essentially instituted on the ground that her father was not competent to execute the sale deed, it being ancestral land. That is a wholly different ground to the one being taken now for withdrawal of the “compromise statement”, such withdrawal being sought on the ground that she has not been paid consideration.

Consequently, finding no reason to interfere with the impugned order, this petition is dismissed.

Hence, without making any comment on the merits of the suit one way or the other, which would naturally be adjudicated upon by the trial court on the basis of the evidence led before it.

05.04.2019
vcgarg/dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes
Whether reportable : No