

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 28.01.2020****CR No.584 of 2020 (O&M)**

Darshan Singh

...Petitioner

Vs.

Ruldu Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Abhishek Singla, Advocate, for
Mr. H.S.Gill, Advocate, for the petitioner.**RAJIV NARAIN RAINA, J. (ORAL)**

1. This petition is directed against the order dated 20.09.2019 passed by the Additional Civil Judge (Senior Division), Talwandi Sabo on the defendants' application under Order 6 Rule 17 CPC seeking leave of the court to amend the written statement by withdrawing the plea of adverse possession and leaving the suit to be contested on title.

2. Defendant No.1, who is the petitioner herein, took two pleas in defence of the suit for declaration. Firstly, the defence was based on title coming through vendor Niranjana Singh (deceased) over land admeasuring 5 Kanals 11 Marlas falling in the revenue estate of Village Jiwan Singh Wala sold to the defendant and his late brother Iqbal Singh by a registered sale deed No.1163 dated 11.06.1987 and through that purchase they were in possession of the suit property.

3. On a question of fact, this Court asked the counsel to tell what was the size of the suit land, which he says is part of larger parcel of land but

the suit property is confined to only 2 Kanal 10 Marlas from 5 Kanals 11 Marlas.

4. In the same paragraph of the written statement [9] subject matter of request for amendment, defendant No.1 has pleaded in the same breath that *“...after death of Iqbal Singh the answering defendants are in continuing possession of the said land including the suit land till date to the knowledge of the plaintiff and all other concerned and the answering defendants have become owners of the said land including the suit land by way of adverse possession, as their possession is open, hostile, notorious, for the last more than 12 years and to the knowledge of the plaintiff and other concerned”*.

5. In civil suits inconsistent pleas in written statements are not shunned or prohibited by the law unless an admission of fact made therein is sought to be retracted, then the prohibition may apply. The dominant purpose of allowing the amendment is to minimize the litigation. As far as inconsistent or alternative pleas in written statements is concerned, the law has been explained by the Supreme Court in M/s Modi Spinning and Weaving Mills Co. Ltd. Vs. Ladha Ram & Co., (1976) 4 SCC 320 in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. See also Baldev Singh & others Vs. Manohar Singh & another, [2006] Insc 470 (3rd August, 2006).

6. To understand what the application for amendment does to the suit before coming to the impugned order, it would be well to reproduce the contents of paragraph 9 in extenso because the amendment applied for was of paragraph 9 apart from two other paragraphs i.e. 4 & 6 of the application under Order 6 Rule 17 of the CPC with defendant asking the trial court to

permit it to withdraw the plea of adverse possession, where similar statement has been made regarding adverse possession. Paragraph 9 reads as under:

“9. That Niranjana Singh deceased, predecessor in interest of defendants No.3 to 6, was in actual physical possession of land measuring 5 kanals 11 marlas bearing specific khasra No.655/5(2-11), 655/2/2 (1-10) and 656/2/2(1-10) situated at V. Jiwan Singh Wala, which includes the suit land, and was so recorded in the cultivation column of jamabandi for the year 1985-86, which was sold by him to the defendant No.1 and his brother Iqbal Singh (now deceased) vide sale deed No.1163 dated 11.06.1987 and he had handed over the actual physical possession of the said land bearing specific khasra numbers to the defendant No.1 and his brother Iqbal Singh and they remained in actual physical possession of the said land and after death of Iqbal Singh the answering defendants are in continuing possession of the said land including the suit land till date to the knowledge of the plaintiff and all other concerned and the answering defendants have become owners of the said land including the suit land by way of adverse possession, as their possession is open, hostile, notorious, for the last more than 12 year and to the knowledge of the plaintiff and all other concerned, therefore, the suit of the plaintiff is misconceived and malafide in nature and is liable to be dismissed.”

7. To turn to the impugned order passed by the learned trial Court and on its perusal, it reveals that the trial Court has dismissed the application on the ground that the defendants cannot be permitted to withdraw the admissions already pleaded in the written statement and plead new defences. No new defence has been pleaded beyond the pleaded defence based on title. The observation is incorrect on facts. I also fail to see any admission in paragraph 9 including in paragraphs 4 & 6 of the original reply. Change of counsel and the advice would have no place in this scenario as thought

damaging by the trial court, as the words in the written statement or in the application under Order 6 Rule 17 CPC cannot be altered except through the procedure of amendment. This Court has been informed that the issues have been framed and the plaintiffs have already produced two witnesses and the case is pending at that stage following rejection of the application. The defendants have yet to start their evidence as and when the plaintiffs' evidence is closed.

8. Looking in hindsight, I think there was no need to file an application under Order 6 Rule 17 CPC to weed out plea of adverse possession because inconsistent plea is admissible so long as it does not amount to an admission. The two statements on rights through sale/purchase supported by registered sale deed and adverse possession are conjoined cheek to jowl in the same paragraph. The first plea by title to land is the major premise. The minor plea made in passing in the same paragraph and in the alternative on adverse possession will become redundant on proof of rights under sale deed, open to be determined in the trial by evidence. This court cannot say a word on the sale deed, the proof of which may depend on application of many angles in the laws of property and those which are incidental and ancillary facts open to evidence. But the fact remains that the major premise will predominate over the plea of adverse possession. It is for the defendant to press either or both the pleas or to drop adverse possession altogether in case he succeeds on title or not to lead any evidence on the alternative plea. Also is the fact that partition proceedings have not taken place and none of the co-owners can assert right on any particular inch of the land till the partition takes place, as I was informed at the hearing.

9. Now the question is that the petitioner has been advised to file the application under Order 6 Rule 17 CPC to remove reference to adverse possession, which in my view need not have been filed as the trial can go on comfortably.

10. The defendant has needlessly invited an adverse order and adverse comments with the dismissal by the application. The trial Judge has not considered the civil law concept of inconsistent and alternative pleas in defence which are permissible and has strayed from the path and fallen in error thinking the plea of adverse possession is an admission, when it is far from the truth and understanding of pleadings.

11. The nature of the suit draws from the plaint and frame of the suit and its character or the cause of action does not change by the defences pleaded in the written statement. As I see it, the position was optional for the defendant. He need not have applied for amendment. Law permitted him to take the alternative pleas. At the same time, the trial court could have simply allowed the application in view of what I have said above. Either way the impugned order is erroneous in its reasoning as the trial court does not seem to have understood the concept of inconsistent and alternative pleas in civil suits which can be made or what is meant by admissions in retraction.

12. Accordingly, he must revisit the order, clear up his mind and choose one from among the three possible options available to him in law, that is, correct his order by assigning proper reasons to achieve the same result or blindly accept the request made in the application, even when to my mind both are inconsequential or simply return the misconceived application filed on bad advise only to invite trouble and waste the time of this court to pass this order on the passionate arguments addressed by the young counsel.

I have interfered in this case only because the reasons assigned in dismissing the application are not germane to the determination and adverse remarks have been made which need not have come on record and which might somewhat unnecessarily touch upon the merits of the case at an interlocutory stage and capable of being seen as adverse comments throughout the trial.

13. For these strange reasons, the instant petition is disposed of by setting aside the order and remanding the case for a fresh decision on the application in accordance with law.

28.01.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No