

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

Sr. No.112

**CR-276-2022 (O&M)
Date of decision : 09.02.2022**

Gurvinder Singh

..... Petitioner

VERSUS

Rupinder Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Dheeraj Mahajan, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner is the plaintiff. He has filed a suit for declaration of title on the basis of Will dated 17.12.2016 allegedly executed by his late father-Bhupinder Singh. Late Bhupinder Singh is survived by his widow-Kulwant Kaur and two daughters, Rupinder Kaur and Manpreet Kaur. Kulwant Kaur filed a written statement admitting the claim of the plaintiff. Defendant No.2-Manpreet Kaur got her statement recorded in Court on 22.10.2018 stating that she adopts the written statement filed by Kulwant Kaur. Thereafter, the plaintiff's oral evidence has been concluded on 18.07.2019. The widow-Kulwant Kaur and Manpreet Kaur were proceeded ex parte on 09.10.2019. On 14.01.2020, Manpreet Kaur (second defendant) filed an application for setting aside the ex parte order dated 09.10.2019 and for amendment of the written statement. The ex parte order was recalled vide order dated 16.09.2021, but permission to amend the written statement was declined. Thereafter, on 15.11.2021, an application was filed for replacing the earlier written statement *inter alia* on

the ground that the counsel-Sh. Davinderpal Singh had never been engaged by the applicant and that he had never been instructed by her to make a statement on 22.10.2018. The plaintiff had played a fraud on the applicant. This application has been allowed vide order dated 09.12.2021 subject to certain conditions.

Learned counsel for the petitioner has argued that once, an admission had been made, it cannot be withdrawn. Further, permission to amend the petition having been refused, the Court could not have permitted substitution of the earlier written statement. Reliance is placed upon S. Malla Reddy Vs. M/s Future Builders Cooperative Housing Society and others 2013 (2) RCR (civil) 957. Passing of impugned order would result in *de novo* trial which would be detrimental to the interest of the plaintiff.

An admission made under a mis-conception of fact can always be withdrawn provided the party is able to prove that the statement made earlier was so made. While passing the impugned order, the trial Court has safeguarded the interest of the plaintiff by imposing a condition that the substituted written statement would be considered only, if the second defendant is able to prove the fraud alleged by her. Thus, the argument raised cannot be accepted. Reliance upon S. Malla Reddy (supra) is misplaced as the said case is distinguishable on facts. In the said case, the trial Court had not imposed a condition similar to that imposed in this case. If, the second defendant is able to lead evidence in support of her case and if, the substituted written statement is to be considered, obviously, the plaintiff will be given a chance to rebut the case set up by her. This would not involve a *de novo* trial as is being argued.

For the aforementioned reasons, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

09.02.2022
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No