

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

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**CR No. 307 of 2022 (O & M)
Date of Decision : 31.10.2022**

Jasmine Dhillon**..... Petitioner****Versus****Raminder Singh Sodhi and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

Present : Mr. Raman Goklaney, Advocate, for the petitioner
Mr. Dhananjay Singh, Advocate, for respondent no.1
None for respondent no.7

TRIBHUVAN DAHIYA, J.

1. This revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 1.2.2020 (Annexure P-7), whereby three applications filed by the petitioner/defendant no.1 have been dismissed. The first application dated 14.12.2019 (Annexure P-4) was filed by the petitioner/defendant no.1 to withdraw her statement dated 16.1.2017 that *"I have no objection if the present suit be decreed in favour of the plaintiff and I have further no objection if the relief be given to the plaintiff as he prayed in the main suit"*. The second application dated 10.1.2020 (Annexure P-5) was filed by the defendant under Order IX Rule 7 CPC for setting aside ex-parte proceedings initiated against her by order dated 25.4.2019. And the third application was for grant of *ad-interim* injunction in her favour under Order XXXIX Rule 1 and 2 CPC. The petitioner prays that two of her applications, dated 14.12.2019 and 10.1.2020, may be allowed.

2. The facts of the case in brief are, respondent no.1/plaintiff (hereinafter referred to as 'the plaintiff') is the step father of the petitioner/

defendant no.1 (hereinafter referred to as 'defendant no.1'), who used to reside with her mother. The mother died on 12.10.2015. It has been alleged that after her death, the plaintiff executed a forged Will dated 15.4.2015 to grab her properties. On the basis of that fabricated Will, he applied for transfer of shares of his deceased wife but the concerned authorities refused the transfer. Thereupon, he filed the suit in question for declaration on the basis of said registered Will claiming to be absolute owner of the properties.

3. During pendency of the suit, defendant no.1 made a statement on solemn affirmation before the trial Court on 16.1.2017, as reproduced in first paragraph, that she had no objection to the suit being decreed in favour of the plaintiff. She had earlier filed an affidavit also to that effect, dated 11.1.2017. Subsequently, defendant no.1 was proceeded against ex-parte by the trial Court vide order dated 25.4.2019 (Annexure P-2). By the same order, defendants no.4 to 7 were also proceeded against ex-parte, other defendants no.2, 5 and 6 had already been proceeded against ex-parte. Even after passing of the ex-parte order, no effort was made to get it set aside. Instead, an application dated 14.12.2019 (Annexure P-4) was filed by defendant no.1 to withdraw her statement dated 16.1.2017 admitting the plaintiff's claim. Thereafter, the application dated 10.1.2020 (Anneuxre P-5) for setting aside the ex-parte proceedings dated 25.4.2019 was filed by her.

4. Both these applications were dismissed by the trial Court, vide the impugned order dated 1.2.2020 (Annexure P-7), by recording that there was no material to believe the contention of defendant no.1 that the statement made by her on solemn affirmation before the trial Court on 16.1.2017 was in ignorance of correct facts or that she had been misled in doing so. Regarding the ex-parte order, it was held that the applicant deliberately stopped appearing before the

Court after getting the statement recorded, therefore, there was no ground to recall the order initiating ex-parte proceedings against her. She had knowledge of the proceedings and still chose not to appear before the Court. The third application filed by defendant no.1 under Order XXXIX Rule 1 and 2 CPC was dismissed by holding that it had been rendered infructuous since the earlier two applications were rejected.

5. Learned counsel for defendant no.1 contends that the statement made by defendant no.1 before the trial Court on 16.1.2017 can be withdrawn in terms of Order XII Rule 6 CPC since the trial Court has not passed any order upon the same. He has further contended that as the suit was at the initial stage, no prejudice would be caused to the plaintiff if the statement was allowed to be withdrawn. In case the defendants were to succeed, the property would devolve as per the natural succession only. Therefore, presence of defendant no.1 would not be to the prejudice of plaintiff.

6. Learned counsel for the plaintiff, on the other hand, contends that all the defendants including defendant no.1, have been proceeded against ex-parte before the trial Court. Even real brother of defendant no.1, i.e., defendant no.2/respondent has been proceeded ex-parte and is not contesting the suit. He further contends that the only purpose of filing the applications by defendant no.1 is to obstruct execution of the Will by the plaintiff, who is a senior citizen, about 80 years of age. It has also been contended that the order impugned is well reasoned and does not call for any interference.

7. The contentions raised by learned counsel for the petitioner/defendant no.1 based upon Order XII Rule 6 CPC have no merit. The provision reads as under:

6. Judgment on admission – (1) Where admissions of fact have been made

either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

Provisions of Order XII Rule 6 CPC are to the effect that where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, without waiting for determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions. These provisions cannot be invoked seeking withdrawal of the statements/admissions made before the Court on solemn affirmation. Merely because the trial Court has not proceeded to pass any order or give any judgment having regard to the admission made, it affords no right to the party concerned to withdraw the admission. The provision does not, either explicitly by necessary implication, permit the party making the admission to withdraw the same; it only enables the Court to make an order or give a judgment having regard to it.

8. In the facts of the case, it is apparent that defendant no.1 made the statement on 16.1.2017, and the application to withdraw the same was filed almost after three years thereafter on 14.12.2019. In between, she had been appearing before the trial Court also. There is no plausible reason forthcoming as to why the statement of admission should be allowed to be withdrawn, especially when the same was consciously made before the Court, based on her affidavit to that effect dated 11.1.2017. Once a statement has been made on solemn affirmation, it cannot be allowed to be withdrawn. Even otherwise, provisions of Order XII Rule 6 CPC make it apparent that it is within powers of

the Court to pass an order on such admission at any stage of the suit as the Court may think proper. As already observed, not passing of any order by the Court on the admission made by a party during trial, cannot be a ground to seek withdrawal of the statement of admission. Therefore, the issue between defendant no.1 and the plaintiff stood settled on the date the statement conceding the plaintiff's claim in the suit was made by her on 16.1.2017, irrespective of the fact whether the Court finally passed any order thereupon or not.

9. The second contention of learned counsel for the petitioner that the suit was at the initial stage and no prejudice would be caused to the plaintiff, also deserves to be rejected since he would be gravely prejudiced in case defendant no.1 is allowed to withdraw her admission made on 16.1.2017. Since, so far as the plaintiff's claim against her (defendant no.1) is concerned, it stands settled in the former's favour. Besides, it is a case where all the contesting defendants have been proceeded against ex-parte and are not opposing the suit. The second limb of the argument also deserves rejection. In case the suit were to be ultimately dismissed and properties to be devolved by way of natural succession, defendant no.1 would certainly get her share being the natural heir. Therefore, on this account also, she cannot be allowed to withdraw her statement.

10. In view of the aforesaid, there is no ground to interfere with the impugned order passed by the trial Court.

11. Dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

31.10.2022

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No