

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No.5904 of 2016 (O&M)

Date of Order:14.12.2023

Kulwant Rai @ Kulwant Singh

.Petitioner

Versus

Jagan Nath and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Amit Jain, Advocate
for the petitioner.**

**Mr. Kanwar Abhay Singh, Advocate
for the respondents.**

ANIL KSHETARPAL, J

1. The court has been informed that the civil suit filed by the respondents (plaintiffs) before the trial court has been dismissed for non-prosecution, however, an application for restoration thereof is pending.

2. Keeping in view the aforesaid facts, it has been considered appropriate to hear and decide this revision petition.

3. While invoking the extra-ordinary jurisdiction of the High Court under Article 227 of the Constitution of India, defendant no.1 before the trial court assails the correctness of the order passed on 12.07.2016. An application filed by defendant no.1 for permission to amend the written statement has been dismissed by the trial court on the ground that the petitioner cannot be permitted to take a U-turn and abandon his earlier stand which might lead to the change of nature of the case. The court has also held that the trial of the case has already commenced and the application is not genuine.

4. This Bench has heard the learned counsel representing the

parties at length and with their able assistance perused the paper book.

5. The learned counsel representing the petitioner submits that while issuing notice of motion his contentions have been summed up in the order dated 22.09.2016,, which reads as under:-

“Petitioner-defendant No.1 seeks amendment of written statement on the premise that the suit land was purchased by him vide 2 sale deeds dated 21.09.1983 from Kasturi Lal son of Pritam Chand. Father and brother of the petitioner by exerting undue influence got suffered an unregistered collusive decree dated 12.10.1987 in favour of Gurdev Singh (father of the petitioner) and started claiming the property as Hindu undivided property. Vide sale deed dated 06.06.1988, the property in question was subjected to sale by defendant No.1-petitioner and his father Gurdev Singh in favour of plaintiff. Thereafter, Civil Court decree dated 03.08.1992 was allegedly suffered by Jagan Nath in favour of the petitioner. The plaintiff has assailed sale deed dated 06.06.1988 and Civil Court decree dated 03.08.1992 in the present suit. Inadvertently, defendant No.1- petitioner admitted the stand of the plaintiff in respect of two transactions. Petitioner intends to explain the factum of admission being erroneous by way of proposed amendment in the written statement which in any case will not shift the onus of relevant issues to be discharged by the plaintiff, nor in any case would change the nature of the suit.

*Learned counsel for the petitioner relies upon **Gautam Sarup Vs. Anand Sarup and others, 2006(4) RCR (Civil) 248** to supplement his arguments.*

Notice of motion for 26.10.2016.

Trial Court is directed to adjourn the proceedings beyond the date fixed by this Court.”

6. On the other hand, the learned counsel representing the plaintiff contends that it is not permissible to withdraw the admission and the defendant cannot be permitted to take resile from his earlier statement.

7. This court has considered the submissions of the learned counsel representing the parties and analyzed the arguments of the learned counsel representing the parties.

8. The plaintiff filed the suit for grant of decree of declaration that he was the owner in possession of 1/7th share in the shop and the sale deed executed on 06.06.1988, by defendant no.1, is illegal, null and void. Defendant no.1 while filing the written statement on 07.06.2012 stated as under:-

“Real facts are that shop in dispute is self acquired property of petitioner and was purchased by him in year 1983 from one Kasturi Lal son of Pirthi Chand resident of Rampura Phul vide registered sale deed dated 21.09.1983 and one another sale deed registered from said Kasturi Lal only with his own funds. Since then answering defendant is the sole owner in possession of the disputed shop and continuous to be the same till date continuously and uninterruptedly and peacefully and he had been running his business of jeweler in the shop in question in name and Style of M/s Kulwant Jewelers which is his sole proprietorship concern.

Answering defendant had utmost faith in his father Gurdev Singh and the plaintiff his elder brother and they taking the undue benefit of the aforesaid position of the answering defendant, used to obtain his signatures etc. without disclosing anything to him as the father and elder brother were in a commanding position. After the purchase of the shop in question by the answering

defendant, in the year 1987 one unregistered civil court decree dated 12.10.1987 passed in civil suit No.500 dated 9.9.1987 in favour of Gudev Singh- Predecessor in interest of the parties, was got procured by said Gurdev Singh from the answering defendant in connivance with plaintiff by keeping him in dark and by wrongly claiming the disputed shop to be HUF/Coparcenery property and wrongly alleging some family settlement whereas neither the property was ancestral or coparcenery nor was there any family settlement. Gurdev Singh had no pre-existing right or interest in the shop in question and thus, the alleged decree dated 12.10.1987 required registration and it did not confer any right, title or interest in said Gurdev Singh and the same is also hit by Section 17 of the Registration Act. Said decree is totally wrong, illegal, null and void, ineffective and inoperative qua the answering defendant. Answering defendant is the sole owner in possession of shop in question since its purchase in 1983 till date.

So much so, said Gurdev Singh and plaintiff in connivance with each other also procured one alleged registered sale deed dated 6.6.1988 from the answering-defendant qua the shop in question. Said sale deed is also totally wrong and illegal qua the rights of the answering defendant. The alleged decree dated 12.10.1987 and alleged sale deed dated 6.6.1988 were procured by said Gurdev Singh and the plaintiff by exercising undue influence over the answering respondent defendant as they were in a position of active confidence over him and he reposed great faith and confidence in them being his father and elder brother and the same were never acted upon or incorporated in the municipal record. Even the plaintiff himself seeks the declaration of the alleged sale deed to be wrong, in the present suit for the oblique

motive to save him from the criminal liability as explained herein-below.

In 1991, answering defendant was requesting his elder brother/plaintiff for separation from other joint property on the ground that shop in question already exclusively belongs to him but the plaintiff was denying said claim and one settlement in 1991 had taken place in which plaintiff had admitted the answering defendant to be owner in possession of the disputed shop and ultimately, plaintiff suffered a civil court decree dated 03.08.1992 in favour of the answering defendant wherein he admitted the answering defendant to be the sole owner in possession of the shop in question. Plaintiff himself appeared in the court on 29.07.1992 and made a statement to the effect that he has no objection if the answering defendant's suit is decreed. Answering defendant had a pre-existing right in the shop in question by virtue of his purchase and in fact, he had always remained its owner and the necessity of the civil court decree arose for abovesaid reasons. After the passing of said civil court decree, the plaintiff himself had been treating the answering defendant to be the owner in possession of the dispute shop. Plaintiff had purchased one another shop adjoining to the disputed shop of the answering defendant on the eastern side from one Dev Raj son of Shadi Ram vide registered sale deed dated 13.05.1999 and in said sale deed, the shop on western side of the purchased shop i.e. the present suit property/disputed shop is shown to be the ownership of Kulwant Rai answering defendant and the plaintiff Jagan Nath is a signatory to said sale deed which is a written admission of ownership of the shop in question. However, later on plaintiff obtained sham power of attorneys from defendants no.2 and 5, namely, Vidya

Devi and Kamaljit Kaur and knowing fully well that he has already suffered aforesaid civil court decree qua disputed shop in favour of the answering defendant, he executed a false and fraudulent sale deed dated 3.6.209 bearing Vasika No. 1041 transferring 2/7 share of the disputed shop in favour of his son Virinderpal Singh and thus, committed an offence punishable u/s 420, 120B IPC and accordingly, FIR No.10 dated 16.03.2010 U/s 420, 120B IPC was registered against the plaintiff and his son Virinderpal Singh at PS Phul, District Bathinda and the present suit has been filed only as a counter blast to said FIR and to create a false defense in said case and to project the false story of ownership of shop in question of Gurdev Singh and the false story of share of his LRs whereas the answering defendant since the sale deeds in the year 1983, is owner in possession of the shop in dispute and as such, the present suit is liable to be dismissed. It is pertinent to mention here that prior to the registration of said FIR, a compromise was affected between the parties wherein plaintiff Jagan Nath had also suffered one affidavit dated 13.2.2010 and admitted that the shop measuring 14' X 32' is of the answering defendant and is in his possession.

9. By way of the amendment, the defendant now wishes to withdraw his admission qua correctness of the judgments and decrees as well as sale deeds and submits that these were correctly registered/passed. It is evident that the defendant has attempted to withdraw his categorical admission. It is correct that in certain cases it is permissible to withdraw the admission provided he has explained his conduct. However, in this case, it is evident that the defendant no.1 while filing the written statement has taken a stand elaborately discussing various events which took place. This is not a case of inadvertent error or mistake. In this case, defendant no.1(the

petitioner) by withdrawing his earlier stand wants to completely change the nature of his stand which, in the considered opinion of the court, has rightly been declined by the trial court.

10. Keeping in view the aforesaid facts and discussion, no ground to interfere is made out.

11. Dismissed.

12. It is clarified that this order will become operative if the suit is restored to its original number.

13. All the pending miscellaneous applications, if any, are also disposed of.

December 14, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO