

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

CR-8170-2017(O&M)

Date of decision:-6.1.2023

Subhash Chander @ Subhash Chand

...Petitioner

Versus

Ankit Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Inderjit Sharma, Advocate
for the petitioner.

Mr.Rajan Bansal, Advocate
for respondent No.1.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiff Subhash Chander @ Subhash Chand had brought a suit against defendants Ankit Kumar and others seeking a declaration that estate of late Sh.Ved Parkash son of Sh.Babu Ram is governed solely by Will dated 30.12.2011 executed by Sh.Ved Parkash deceased, owner during his lifetime in favour of his three sons i.e. plaintiff Subhash Chander @ Subhash Chand, defendant No.2 Harbans Lal and defendant No.3 Makhan Lal, whereas his daughters Pushpa alias Guddi, Pushpa alias Putti and Veena Rani, defendants No.4 to 6 stood divested from inheritance qua the suit properties, besides seeking a decree for permanent injunction restraining defendants No.1 to 6 from interfering in any manner in peaceful possession of the plaintiff over the suit properties and from taking illegal

and forcible possession thereof from the plaintiff etc.

2. On getting notice, the defendants appeared and filed written statement contesting the suit. Issues on merits were framed. The parties led evidence in support of their respective claims. While the trial Court of Civil Judge (Jr.Divn.), Bathinda is said to have heard the arguments in part, the defendant No.1 is said to have served a notice upon the plaintiff for admission and denial of documents i.e. certified copies of plaint and affidavit filed by the plaintiff Subhash Chander in suit titled 'Subhash Chander Versus Ankit Kumar and others' bearing Civil Suit No.908 of 11.6.2012, withdrawn on 21.7.2012 from the Court of Civil Judge (Jr.Divn.), Bathinda.

3. The plaintiff submitted objections to the notice stating that it was not maintainable having been filed at a highly belated stage when evidence of the parties stood already closed; notice to admit documents in terms of Order XII Rule 3 CPC is meant to be given immediately after framing of issues as the whole purpose behind this provision is to save costs and expenses in leading evidence and when the evidence has already been led and case even partly argued on behalf of the plaintiff then this notice is not maintainable and deserves to be rejected.

4. However, the trial Court of Civil Judge (Jr.Divn.), Bathinda vide impugned order dated 1.9.2017 had observed that compliance of Order 12 Rule 2A has not been made by the plaintiff while giving reply, hence documents are deemed to be admitted by the plaintiff as those have not been specifically denied.

5. The plaintiff felt aggrieved by that order and has challenged

the same by way of filing the present revision petition, praying that the order be set aside by way of acceptance of the revision petition.

6. Notice of the revision petition was issued to the respondents and respondent No.1 has put in appearance through counsel.

7. I have heard learned counsel for the parties besides going through the record and I find that the order under revision is not legally sustainable.

8. As has been rightly submitted by learned counsel for the revision petitioner that provision under Order 12 CPC with regard to admission of documents had been incorporated to curtail the time of the trial because if the documents relied upon by any of the party is/are admitted by the opposite party that saves time and expenditure in proving said documents. Rule 1 of Order 12 CPC provides that any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party and as per Rule 2 dealing with notice to admit documents, either party may call upon the other party to admit, within seven days from the date of service of the notice any document, saving all just exceptions and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be.

9. The reading of the provision goes to show that the notice is to be issued in the beginning of the trial and not at fag end. In this case, the notice had been issued by the defendant No.1 after the parties had led their evidence and even arguments had been addressed in part. The

defendants had adequate opportunities to prove the plaint of the earlier suit said to have been filed by the plaintiff and affidavit filed therein by confronting the plaintiff with such documents during the course of his cross-examination, when he had stepped into the witness-box to depose as his own witness and even otherwise during their evidence, the defendants could have proved the plaint and the affidavit. As regards the first suit filed, the same is said to have been allowed to be withdrawn by the trial Court. Therefore, the plaint in the first suit and the affidavit filed therein do not have much relevance in this case.

10. As per the counsel for respondent No.1 – defendant No.1, such defendant want to show to the Court that the suit is barred under Order 2 Rule 2 CPC. But if the defendants wanted to do so, they should have led evidence in that regard and should have got the documents proved during the cross-examination of the plaintiff and his witnesses or by examining any Advocate or Clerk to the Advocate and not in this manner. Rather the attempt appears to be plug in the loopholes in the case of the plaintiff by getting the documents exhibited through back-door entry, which can certainly be not allowed.

11. The trial Court lost sight of these aspects while coming to the conclusion that since the documents had not been specifically denied, they are deemed to be admitted, as such duly proved. The judgment i.e. **Ram Chander Versus Darshan Lal Arya, 2018(3) ILR(H.P.) 211** referred to by learned counsel for the respondent No.1 – defendant No.1, is distinguishable and does not find application due to different facts and circumstances as well the context in which such observations had been

made.

12. Therefore, the order under revision cannot stand judicial scrutiny. The same is accordingly set aside by way of acceptance of the revision petition and documents in question may not be taken into consideration by the trial Court as legally proved documents for the reason of deemed to be admitted by plaintiff in terms of Order 12 Rule 2A CPC.

13. The revision petition is allowed accordingly.

6.1.2023
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No