
Before V. S. Aggarwal, J

TILAK RAJ MAHAJAN,—*Petitioner.*

versus

RATTAN CHAND,—*Respondent.*

C. R. No. 255 of 1996

25th September, 1998

Code of Civil Procedure, 1908—Order 6 Rl. 17—Admissions—Amendment of pleadings—When permissible—Though inconsistent pleas can be taken in pleadings, however, admissions made cannot be allowed to be withdrawn if its effect is to displace the opposite party's case or takes away his vested right—Such admissions if made erroneously can be permitted to be withdrawn.

Held that admission made cannot be allowed to be withdrawn, particularly when it takes the vested right of the other party. But admission, if explained or shown to be erroneous, can be withdrawn. It goes with the facts and circumstances of each case. If it is shown that inadvertently an incorrect fact was mentioned in the pleadings, in that event, interest of justice can well require that amendment should be allowed.

(Para 8)

B. C. Sharma, Advocate, for the Petitioner.

Premjit Kalia, Advocate, for the Respondent.

JUDGMENT

V. S. Aggarwal, J.

(1) The present revision petition has been filed by Tilak Raj Mahajan directed against the order passed by the learned Sub Judge 2nd Class, Amritsar, dated 5th December, 1995. By virtue of the impugned order, the learned trial Court dismissed the application filed by the petitioner seeking amendment of the written statement.

(2) The relevant facts are that respondent Rattan Chand is the brother of petitioner. He filed a civil suit for declaration that the will dated 18th November, 1977 purported to have been executed by Smt. Lajwanti is illegal and is the result of fraud and

misrepresentation. The petitioner filed written statement and contested the suit. He alleged that Smt. Lajwanti had executed a registered will in his favour and that he was the owner of the property. In paragraph 1 of the plaint, however, it was mentioned that Anant Ram, husband of Smt. Lajwanti, was the owner of the property in dispute. During the pendency of the suit, petitioner filed an application seeking amendment of the written statement to plead that the admission made in paragraph 1 of the written statement is by mistake. It is against the contents of registered conveyance deed and may be allowed to be withdrawn. The conveyance deed in favour of Smt. Lajwanti was produced in evidence. The learned trial Court dismissed the application holding that the admission made cannot be allowed to be withdrawn. Aggrieved by the same, present revision petition has been filed.

(3) It is obvious from the resume of the facts given above that the controversy in the present case revolves around as to if in the facts of the present case admission made that Anant Ram was the owner of the property can be allowed to be withdrawn or not? Order 6 Rule 17 of the Code of Civil Procedure which holds the key to the question in controversy reads as under :—

“17. **Amendment of pleadings** :—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.”

(4) A perusal of Order 6 Rule 17 of the Code shows that all amendments necessary to determine the question in controversy have to be allowed. This is because the duty of the Court is to determine the rights of the parties and not to punish them for their mistakes, if any. Howsoever late may be the proposed amendment, if it is necessary to determine the question in controversy, the same should be allowed.

(5) On behalf of respondent, strong reliance was placed on a large number of precedents to contend that admission made cannot be allowed to be withdrawn. Reliance was placed on the well known decision of the Supreme Court in the case of *M/s Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s Ladha Ram & Co.* (1), wherein the Supreme Court held that admissions made cannot be

(1) A.I.R. 1977 S.C. 680

allowed to be withdrawn which displaces the other party completely. In paragraph 10 of the judgment, it was held as under :—

“It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court.”

(6) Similarly, Delhi High Court in the case of *M/s Pushpa Guglani v. M/s Modipon Limited* (2), was concerned with a situation where the plaintiff admitted that defendant was his tenant. Thereafter, he sought permission to amend the plaint and allege that the defendant, in fact, was a licensee. The Court held that admission so made could not be allowed to be withdrawn. This Court in the case of *M/s Dalima Biscuits Private Ltd. v. Punjab State Electricity Board* (3), was also concerned with a question as to whether the plaint should be allowed to be amended or not. The suit was filed for permanent injunction to restrain the Electricity Board from disconnecting the electricity supply. The amendment was claimed to convert into a suit for refund of the excess payment. This Court held that amendment could not be allowed and remedy, if any, would lie in filing a separate suit.

(7) Two other judgments from the Supreme Court can also be taken note of. In the case of *Shrimoni Gurudwara Committee v. Jaswant Singh* (4), Supreme Court held that inconsistent pleadings could be taken in the written statement but a person who has denied the title cannot be allowed to set up a title with himself. This would be mutually inconsistent plea and the amendment could not have been allowed. More recently, Supreme Court in the case of *Heeralal v. Kalyan Mal and others* (5), was dealing with a case of suit for partition. The defendants admitted 7 out of 10 properties to be of joint family property in the written statement and contested that

(2) 1992 (1) R.R.R. 425

(3) 1992 (2) R.R.R. 423

(4) J.T. 1996 (8) S.C. 292

(5) A.I.R. 1998 S.C. 618

only 3 properties belonged to them. They wanted to withdraw the admission. Supreme Court held that admission made could not be withdrawn and in paragraph 10 of the judgment, it was held as under :—

“Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff’s case it could not be allowed as ruled by a three-member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the latter decision took a contrary view *qua* such admission in written statement, it must be held that it was per incuriam being rendered without being given an opportunity to consider the binding decision of a three-Bench of this Court taking a diametrically opposite view.”

(8) It is obvious from what has been noted above that admission made cannot be allowed to be withdrawn, particularly when it takes the vested right of the other party. But admission, if explained or shown to be erroneous, can be withdrawn. It goes with the facts and circumstances of each case. If it is shown that inadvertently an incorrect fact was mentioned in the pleadings, in that event, interest of justice can well require that amendment should be allowed.

(9) This Court in the case of *Gujjar Singh v. Gulzar Singh and others* (6), was concerned with a matter where written statement had been filed; amendment was claimed; it was explained that admission made was erroneous. This Court held that amendment was rightly allowed. Reliance in this regard was placed on the decision of the this Court in the case of *Kehar Singh v. Balraj Singh and others* (7). Similarly, in the case of *Jagroop Singh and another v. Bhajna* (8), this Court held that admission made erroneously can be explained away or withdrawn by amendment of pleadings.

(10) Reverting back to the facts of the present case, it is patently clear that admission in the present case had been made erroneously. Brief resume of facts have already been given above. At the risk of repetition, it can be mentioned that while the suit was filed by the respondent for a declaration challenging the Will of

(6) 1991 (2) P.L.R. 266
(7) 1991 P.L.J. 154
(8) 1994 R.L.J. 616

Smt. Lajwanti, it was mentioned in the written statement by the petitioner that Anant Ram was the owner of the property. This *ex facie* appears to be erroneous. The written statement has to be read as a whole. One paragraph or line cannot be read in isolation of the rest. The petitioner's claim was that Smt. Lajwanti had executed a registered Will in his favour and he has become the owner by virtue of the said Will. He had even produced the conveyance deed in favour of Smt. Lajwanti. Keeping in view the said fact, the particular line that Anant Ram was the owner of the property was out of context. In this background, if the amendment is disallowed, it would be patently doing injustice because defence of the petitioner is known. He should not have admitted Anant Ram to be the owner. The trial Court in these circumstances fell into error in disallowing the application.

(11) For these reasons, the revision petition is allowed and the impugned order is set aside. Instead, the amendment is allowed subject to payment of Rs. 500 as costs.

R.N.R.

Before T. H. B. Chalapathi, J.

RAJINDER KUMAR,—*Petitioner.*

versus

SANATAN DHARAM MAHABIR DAL & OTHERS,—*Respondents.*

C. R. No. 4595 of 1997

9th October, 1998

Code of Civil Procedure, 1908—Ss. 47 & 151, O. 21, Rl. 35—Execution of decree—One of the judgment debtors objecting to the decree on the ground that he was minor at the time of institution of suit and was not properly defended in the proceedings—In the suit, Court appointing guardian who engaged the counsel appearing for mother and brother of the objector—Appeal against the decree decided in 1992 when objector had already become major—Decree upheld upto the Supreme Court—No objection taken before High Court or in Supreme Court that the decree is invalid on ground of defective representation—Objector did not get himself declared as