

(2000) 02 AHC CK 0071**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 42124 of 1999

Sita Ram and Others

APPELLANT

Vs

XIVth Additional District

RESPONDENT

Judge, Varanasi and Others

Date of Decision: Feb. 22, 2000**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Hon'ble Judges: S.N. Agarwal, J**Final Decision:** Allowed**Judgement**

Sudhir Narain, J.

This writ petition is directed against the order dated 2371999 passed by respondent No. 1 allowing the revision and rejecting the application for amendment filed by the defendant petitioners.

2. The plaintiff respondents filed suit for recovery of arrears of rent, ejectment and damages against the petitioner with the allegations that they were owners and landlords of House No. 23/29, Mohalla Chitgra Ghanta Ki Gali, Chowk, Varanasi wherein there is a Kothri in which deity is installed of which defendant No. 2 is in service. The petitioners filed written statement and in paragraph 1 of the written statement they asserted that they have no knowledge with regard to ownership of the property of the plaintiff. In paragraph 25 of the written statement it was stated that the defendants have no knowledge as to how the petitioners are owners of the property but without going into the controversy they alleged that they were admitting the plaintiffs as owners of the property

3. Subsequently, the defendant petitioners filed an application for amendment of the written statement wherein they stated that they have come to know of the decisions in Suit No. 45 of 1968 and in Appeal No. 80 of 1971 and according to the said decisions the plaintiffs were not owners of the property in question. They sought

amendment in paragraph 1 and 25 of the written statement. The trial Court allowed the application on 651997. The plaintiff respondents filed revision. The revisional Court has allowed the revision by the impugned order dated 2371999 on the ground that the petitioner having once admitted, they cannot now withdraw their admission.

4.1 have learned counsel for the parties.

5. Learned counsel for the petitioners submitted that the petitioners are entitled to withdraw their admission if they can explain their admission and the reasons under which they had made such admission. He has placed reliance upon the decision *Panchdeo Narain Srivastava v. Km. Jyoti Sahay and another*, AIR 1983 SC 462, wherein it was held that an admission made by a party may be withdrawn or may be explained away.

6. Learned counsel for the respondents has placed reliance upon the decision *Mis. Modi Spinning & Weaving Mills Co. Ltd., and another v. M/s Ladha Ram & Co.*, AIR 1977 SC 680, wherein it was observed that the amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by defendants in written statement, should not be permitted. In *Heeralal v. Kalyan Mal and others*, AIR 1998 SC 618, it was held that the amendment should not be permitted to displace the plaintiff's case and his right to get preliminary partition decree. In this case the suit was filed for partition wherein the defendants had admitted 7 out of 10 properties were joint family property and subsequently sought amendment of the written statement withdrawing earlier admission made by them in regard to 7 properties. In these circumstances the Court did not permit the defendants to withdraw their admission. In the facts of the present case the petitioners in the written statement had categorically stated that they had no knowledge in regard to the rights of the property. In paragraph 25 of the written statement they had asserted again this fact but it was further stated that for the purpose of the case they were admitting the petitioners as owners and "landlord of the property. They had filed application for amendment on the ground that the matter was decided by the Civil Court and in those decisions the petitioner was not held owner of this property and in view of this judgment the amendment was sought to be made.

7. The petitioners had, in fact, relied upon those judgment and not had withdrawn their admission in respect of the averments made in the written statement. In paragraph 25 of the written statement they had taken the pleas that even if there may be any other defendant for the purpose of the case they were treated plaintiffs as landlords. The petitioners, however, can rely upon the judgment in which the rights of the plaintiffs were decided. In these circumstances the trial Court was justified in allowing the amendment application. Respondent No. 1, in these circumstances, should have not interfered in setting aside the order of the trial Court in exercise of jurisdiction under revision.

8. It has been further held that as the rights of the plaintiffs are yet to be determined, the amount which has been deposited in the Court by the defendants may not be withdrawn by the plaintiffs. I do not find this part of the judgment as erroneous. Learned counsel for the parties, however, agree that the amount may be invested in F.D.R. of a nationalised Bank for a period of one year and the amount so accrued may be given to the plaintiffs on their success. The period of one year may be extended by the Court if the suit is not decided within one year.

9. In view of the above the writ petition is partly allowed. The impugned order is quashed to the extent mentioned above. The parties shall bear their own costs. The suit may be decided expeditiously possibly within six months. Petition partly allowed.