
Sita Ram and Others Vs XIVth Additional District Judge, Varanasi and Others

Civil Miscellaneous Writ Petition No. 42124 of 1999

Court: Allahabad High Court

Date of Decision: Feb. 22, 2000

Acts Referred:

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

Citation: (2000) 02 AHC CK 0071

Hon'ble Judges: S.N. Agarwal, J

Final Decision: Allowed

Judgement

Sudhir Narain, J.

This writ petition is directed against the order dated 23/7/1999 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 plaintiffrespondents filed revision. The revisional Court has allowed the revision by the impugned order dated 2371999 on tire

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and another, AIR 1983 SC 462, wherein it was held that an admission made by a party may be withdrawn or may be explained away.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.