
(2001) 05 MP CK 0035

Madhya Pradesh High Court

Case No: Civil Revision No. 2680 of 2000

Chandrasen Jain

APPELLANT

Vs

Suresh Chand Jain and others

RESPONDENT

Date of Decision: May 9, 2001

Acts Referred:

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

Citation: (2001) 3 MPHT 486 : (2001) 3 MPLJ 191

Hon'ble Judges: Mr. V.K. Agrawal, J

Bench: Single Bench

Advocate: Shri P. Asati, for the Appellant; Shri G.C. Jain, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.K. Agrawal, J.

This revision is directed against the impugned order dated 1-12-2000 in Civil Suit No. 286-A/99 by IIIrd Civil Judge Class-II, Bhopal, whereby the application under Order 6 Rule 17, CPC of defendant/petitioner has been rejected.

The plaintiffs/respondents filed a suit for eviction against the petitioner/tenant. The suit is being resisted by the defendant/petitioner, who filed his written statement after seeking several adjournments in that regard. The plaintiffs/respondents in para 3 of the plaint (Annexure A-1) pleaded that the suit property was the ancestral property of plaintiffs, and initially Dwarka Prasad was inducted in the suit premises as tenant. It was further pleaded that after the death of original tenant Dwarka Prasad, the defendant/petitioner inherited the tenancy rights in the suit premises. It was also pleaded that in the family partition of plaintiffs, the suit property was allotted in the share of Choudhary Gulab Chand Jain. The plaintiff/respondent No. 1 succeeded to the property by virtue of will dated 28-10-98, executed by Choudhary

Gulab Chand Jain and that he is the sole owner and landlord of the suit property. It was further pleaded in the plaint that in order to avoid any controversy, the other plaintiffs/respondent Nos. 2 and 3 have also been joined in the suit.

The defendant/petitioner in his written statement specifically admitted that a "Kiraya Nama" was executed as pleaded by the plaintiffs and it was also admitted that Dwarka Prasad has taken the suit premises on rent from the plaintiffs. The fact of partition amongst the family members of the plaintiffs was also not denied specifically and ignorance in that regard was pleaded.

Subsequently, an application for amendment under Order 6 Rule 17 of CPC (Annexure A-3) was filed by the defendant/petitioner. By the said amendment several admissions made earlier in the written statement have been sought to be withdrawn, including the admission of execution of "Kiraya Nama" as pleaded by the plaintiffs. By the proposed amendment, it was also denied that there was family partition or that the suit property fell in the share of Choudhary Gulab Chand Jain or that the plaintiff/respondent No. 1 succeeded to the same by virtue of the will. Besides the above, other extensive amendments were also proposed by the said application.

The learned Trial Court has rejected the application mainly on the ground that the admission cannot be permitted to be withdrawn and that many facts sought to be pleaded by amendment are not relevant to the controversy between the parties.

Learned counsel for defendant/petitioner relying upon [Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another](#),) has urged that admission can be permitted to be withdrawn, He has also placed reliance in the above connection on [Hundari Bewa Vs. Keluni Dei and Others](#), Learned counsel for petitioner also submitted that the averments as above could not be pleaded earlier, because, at the time of filing of written statement, he was taken ill and was not in a position to understand as to what averments were made in his written statement.

Learned counsel for plaintiffs/respondents however supported the impugned order and submitted that extensive amendment as prayed for are not justified. It was also urged that the defendant/petitioner cannot be permitted to withdraw the admission made earlier in written statement without any justification. It was further urged that permission to withdraw such admissions by way of amendment as proposed by the defendant/petitioner would cause serious prejudice to the rights of the plaintiffs/landlords.

It appears that by the proposed amendment the petitioner is seeking to withdraw specific admissions earlier made by him. The defendant/petitioner has admitted that "Kiraya Nama" was executed by him, as was pleaded by the plaintiffs/respondents. The above admission is sought to be withdrawn. Similarly, the admission regarding relationship of landlord and tenant between the parties, is also sought to be denied by the amendment. The above withdrawal of admission would certainly cause

serious prejudice to the case of plaintiff/respondents. The explanation of the defendant/petitioner, with regard to the amendment is also not acceptable.

In view of law laid down in [Heeralal Vs. Kalyan Mal and Others](#), withdrawal of admission which would cause prejudice to the case of plaintiffs, cannot be permitted. It may also be noticed that the defendant/petitioner has not assigned proper reasons as to how and why the earlier pleadings were raised by him and as to why the amendment has been necessitated. The grounds urged in that regard in the amendment application are vague and do not deserve acceptance.

Accordingly, the order of Trial Court rejecting the application for amendment does not call for any interference. The revision has no merit and is accordingly dismissed. Consequently, M. (C). P. No. 2009/2000 also stands dismissed. The interim stay granted earlier shall stand vacated.

Civil Revision dismissed.