Ranjit Kaur Vs G.S. Sandhu and Others

Court: Delhi High Court

Date of Decision: Aug. 3, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17

Citation: (2009) 1 ILR Delhi 465

Hon'ble Judges: Vikramajit Sen, J; V.K. Jain, J

Bench: Division Bench

Advocate: I.S. Alag, for the Appellant; J.K. Seth and Shalini Kapoor, for the Respondent

Final Decision: Dismissed

Judgement

Vikramajit Sen, J.
This Appeal assails that part of the Order dated 18.4.2006 passed by the learned Single Judge in which IA No.

5945/2002 filed by Defendant No. 1 under Order VI Rule 17 of the Code of Civil Procedure, 1908 had been allowed. There can be no cavil that

amendments, especially to Written Statements, must be liberally allowed. One of the exceptions is that the admission contained in the Written

Statement cannot be allowed to be withdrawn, although the Supreme Court has recognized reservations and limitations even to this principle. In a

recent decision their Lordships, while taking into account various decisions of Supreme Court in Sushil Kumar Jain Vs. Manoj Kumar and

Another, , have held thus:

9. ...a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and

clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his

original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or

substituting or altering his defence.

10. At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are

not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the

same problem as adding, altering, substituting a new cause of action (See Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.,).

11. Similar view has also been expressed in Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, . It is equally well settled

that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of

prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking

inconsistent pleas in the written statement can also be allowed.

12. Keeping these principles in mind, let us now take up the question raised before us by the learned Counsel for the parties. As stated herein

earlier, the admission made by a defendant in his written statement can be explained by filing the application for amendment of the same. This

principle has been settled by this Court in Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, , while considering this issue, held that

the admission made by a party may be withdrawn or may be explained. It was observed in paragraph 3 of the said decision as follows:

An admission made by a party may be withdrawn or may be explained away. Therefore, it cannot be said that by amendment, an admission of fact

cannot be withdrawn....

13. In view of our discussions made hereinabove and applying the principles laid down by this Court in the aforesaid decisions, we are therefore of

the view that the High Court as well as the learned Rent Controller had acted illegally and with material irregularity in the exercise of its jurisdiction

in not allowing the application for amendment of the written statement of the appellant.

2. The Defendant is usually permitted to adduce facts which are relevant to the decision and which may have not been pleaded earlier, since the

delay which may result in adjudicating such applications would normally be duly compensated by awarding costs. It is this principle which

persuades us to agree with the reasoning and dialectic of the learned Single Judge in the impugned Order. In allowing the application of Defendant

No. 1 to amend his Written Statement, no admission made by him can, by any stretch of imagination, be seen to have been permitted to be

withdrawn. The pleadings in the original Written Statement have only been added to. The Appellant is arrayed as Defendant No. 3 in the Plaint and

the pleadings relevant to her, inter alia, are as follows:

The properties with three sisters, that is, defendants were obtained by them through court decrees through mother''s will. Father, however, gave by

will dated 29th January, 1982 certain agricultural lands to defendant No. 3 (which the answering defendant accepts) claiming these lands as his

share of HUF consisting of this land plus some more agricultural land and Banaur house and vacant plot.

3. In this regard, the amendments affecting the rights of Defendant No. 3/Appellant are in the form of paragraph 3(b) and 9(b) to the Preliminary

Submissions which are in these words:

3(b) The Defendant No. 1 submits that if for any reason, the Will dated 4.3.1992 propounded by the plaintiff is held to be valid, and it is held that

Shri Gurpuran Singh had the right to execute the Will in respect of the properties in suit ; though this fact is not conceded by Defendant No. 1, in

that event also, it is submitted that by the Will dated 4.3.1992, the Will dated 29.1.1982 stood revoked and Defendant No. 3 was not entitled to

the properties bearing Khasra Nos. 72/4919, 4929, 4930, 5038, 5039, 5040, 5041, 5042, 5043, 5044, 5045, 5046, 5047 and 5048 situated in

Village Banur Punjab and the properties bequeathed by Will dated 29.1.1982 are also liable to be partitioned amongst the plaintiff and Defendants

No. 1 to 4.

9(b) The Defendant No. 1 submits that if for any reason, the Will dated 4.3.1992 propounded by the plaintiff is held to be valid, and it is held that

Shri Gurpuran Singh had the right to execute the Will in respect of the properties in suit ; though this fact is not conceded by Defendant No. 1, in

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Village Banur Punjab and the properties bequeathed by Will dated 29.1.1982 are also liable to be partitioned amongst the plaintiff and Defendants

No. 1 to 4.

It will be noticed that these paragraphs are verbatim identical to each other.

4. We are unable to agree with Mr. I.S. Alag, learned Counsel for the Appellant, that any admission made by Defendant No. 1 has been allowed

to be withdrawn or even to be diluted or explained away. It is significant that the Appellant does not dispute the Will executed by her father in

1992, paragraph 4 of which reiterates the bequest in her favour in the holograph Will dated 29.1.1982. It is axiomatic that no sooner the Will

dated 4.3.1992 is accepted, its effect will be to revoke all previous Wills, unless the later Will clearly excludes the operation of an earlier Will. We

may record that the parties, other than Respondent No. 1/Defendant No. 1, have taken the stand that there are interpolations in the 1992 Will.

That is a matter which will have to await the outcome of the Trial, as well also be the aspect of whether the properties in question are HUF

properties which could be transferred by the late father of the parties hereto. In allowing the application, the learned Single Judge has not returned

any finding, whatsoever, on this important aspect of the dispute, as we are also specifically not doing.

5. In these circumstances, we find no error in the impugned Order. Several other issues have been contended before us, such as the existence of a

Family Arrangement dated 31.5.1994 etc. The probative value and relevance of these documents will undoubtedly be gone into threadbare when

the Suit comes up for Final Disposal.

6. At the conclusion of the arguments, Mr. Seth, learned Senior Counsel for Respondent No. 1, had challenged the maintainability of the Appeal,

predicated on the celebrated decision of the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . The argument is that the

impugned Order does not finally decide any rights of the parties and hence is not appealable. We do not propose to go into this issue.

7. In these circumstances, the Appeal is dismissed with no order as to costs.