

Darshan Lal and Others Vs. Comrade Daya Singh and Others

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Court : Punjab and Haryana

Decided On : Aug-03-1989

Reported in : AIR1990P& H93; (1990)97PLR56

Judge : G.R. Majithia, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 96 - Order 41, Rules 25 and 27

Appeal No. : S.A.O. No. 82 of 1987

Appellant : Darshan Lal and Others

Respondent : Comrade Daya Singh and Others

Advocate for Def. : H.S. Sangha, Adv.

Advocate for Pet/Ap. : G.S. Cheema, Adv.

Judgement :

1. This/appeal is directed against the order of the first appellate Court remitting the case for retrial after allowing amendment of the written statement.
2. The petitioners (for short the 'plaintiffs') filed a suit for permanent injunction restraining the respondents (for short the 'defendants') from interfering in their peaceful possession on the disputed plot. During the pendency of the suit, the plaintiffs were forcibly dispossessed necessitating the amendment of the plaint

which was allowed, the relief in the plaint was confined for decree for possession. The learned trial Judge on appraisal of the entire evidence found that the plaintiffs were the owners of the plot composed in Khasra No. 791 and decreed the suit. The defendants being aggrieved by it filed first appeal which was entrusted for disposal to Shri S.S. Kanwal, Additional District Judge, Ludhiana. During the pendency of the first appeal, applications for amendment of the written statement, appointment of a local commissioner and for leading additional evidence were filed. The appellate Judge allowed the application for amendment of the written statement set aside the judgment and decree of the trial Judge and after so doing remitted the case to the trial Judge for retrial after framing issues and allowing the parties to lead evidence. The applications for leading additional evidence and for appointment of local commissioner were dismissed in view of the order passed on the application for amendment of the written statement.

3. It is unfortunate that the Additional District Judge did not understand the elementary principles of law. Even if he had found that there was legal justification for allowing the amendment of the written statement, he could have directed the defendants to lead such evidence before it as they thought fit and disposed of the appeal on merits or else he could have allowed the amendment of the written statement, framed additional issue or issues arising from the pleading of the parties and after so doing ask for a report from the trial Judge under Order XLI, Rule 25 of the Code of Civil Procedure. Reversing the well reasoned judgment of the trial Court without assigning any reasons indicates lack of applicability of judicial mind or a deliberate attempt to set aside the judgment and decree of the trial court. On merits, there was no justification for allowing the amendment of the written statement. The plaintiffs came to the Court on the ground that they were the owners of plot measuring 281 square yards comprised in Khasra No. 791. The defendants controverted the allegations made in the plaint and pleaded that Khasra No. 791 belonged to the Custodian and was owned by the Central Government and they were in possession of the same since 1970 and in 1973 regular allotment was made in their favour. Their specific defence was that they were in possession of land measuring 395 square yards out of Khasra Nos. 791, 794 and 795 which was negatived by the trial Judge on evidence. Before the first appellate Court, an application for amendment of written statement was made on

the ground that on the date of filing of the written statement, they were not clear that they were in possession of Khasra No. 795 or 791 but they were at any rate in possession of Khasra No. 794 and the property in dispute fell in Khasra No. 794, which is contrary to the earlier plea. The amendment on the fact of it was lacking in bona fide and a deliberate attempt to delay the proceedings. The plot in dispute as found by the trial Judge on appreciation of the voluminous documentary evidence falls in Khasra No. 791. In fact, it amounted to withdrawal of the admission made in the earlier written statement. Admission made by a party can be withdrawn or can be explained provided cogent material is adduced before the Court. In the instant case, there was no material. To the contrary, the plea sought to be raised by way of amendment of the written statement was vague and imaginary and it ought not to have been allowed.

4. The order of the first appellate Court is set aside. The case is remitted to the District Judge, Ludhiana with the directions to dispose of the appeal expeditiously within one month from the date the parties put in appearance before him. The parties through their counsel are directed to appear before the District Judge, Ludhiana, on September 25, 1989. Costs will abide by event.

5. Order accordingly.