

Bant Singh Vs. Kuldeep Singh and anr.

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Court : Punjab and Haryana

Decided On : Oct-27-1994

Reported in : (1995)109PLR214

Judge : V.K. Jhanji, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17

Appeal No. : Civil Revision No. 1539 of 1994 and C.M. Nos. 6511/C-/94,7010/C-II/94 and 7020/C-II/94

Appellant : Bant Singh

Respondent : Kuldeep Singh and anr.

Advocate for Def. : Amarjit Markan, Adv.

Advocate for Pet/Ap. : Anil Khetarpal, Adv.

Disposition : Petition allowed

Judgement :

V.K. Jhanji, J.

1. During my inspection of courts of Sessions Division, Sangrur, Bant Singh son of Amar Singh, appeared before me at Sangrur and submitted that his sons Kuldip Singh and Gobinder Singh have filed a civil suit against him for declaration on the

allegations that he had given the property to them by way of family settlement. He submitted that under pressure and co-ercion, they got his statement recorded before Shri N.K. Goel, P.C.S., Sub Judge 1st Class, Dhuri. When the case was adjourned for orders, he appeared before the Sub Judge, Dhuri and brought to his notice the pressure exercised on him by his sons. The Presiding Officer told him that he would take this into consideration but on 22.2.1994, decree was passed on the basis of statement made by him without taking note of what he had stated before him. He further stated that not only the property which is the subject-matter of the suit but the remaining property also was got transferred in the name of the father-in-law of one of his sons. He thus stated that he was left with no property by his sons.

2. In the circumstances, I found it a fit case to treat his application as a civil revision and the same was ordered to be registered and notice was ordered to be issued to Kuldip Singh and Gobinder Singh, sons of Bant Singh. Records of Civil Suit No. 267 of 17.4.1993 were also summoned from the Court of Sub Judge 1st Class, Dhuri.

3. On 2.6.1994, Mr. Amarjit Markan, Advocate appeared and arguments were heard in part. During the course of arguments, it was suggested to the counsel for allowing Bant Singh to retain the property during his life time but the suggestion was not acceptable as according to the sons of Bant Singh, they were fearing that Bant Singh may not give the property to one Kamlesh Rani alias Kamlesh Kumari to whom he had got married. Bant Singh though had stated that he has no intention to give the property to Kamlesh Rani aforesaid, yet this was not found enough to satisfy the sons of Bant Singh. Consequently, case was adjourned to 8.7.1994 i.e. after summer vacations.

4. On July 8, 1994 Kamlesh Rani appeared and stated that Bant Singh had been murdered by his sons. In the circumstances, Mr. Anil Khetarpal, Advocate, present in Court was asked to assist the Court. As Kamlesh Rani was apprehending danger to her life, she was provided security cover. Subsequently, application under Order 22 Rule 3 of the Code of Civil Procedure read with Section 151 of the said Code was filed by Kamlesh Rani alias Kamlesh Kumari for being brought on

record as sole heir of Bant Singh. The said application was allowed vide order dated 15.7.1994. Later on, two applications were filed by Satnam Kaur, daughter of Bant Singh, for bringing on record daughters and sons of Bant Singh as his legal heirs but the same were dismissed as the application of Kamlesh Rani had already been allowed.

5. After hearing the learned counsel for the parties, I am of the view that the civil revision deserves to succeed and the decree passed in terms of written statement originally filed by Bant Singh deserves to be quashed. Suit for declaration was filed by Kuldip Singh and Gobinder Singh, sons of Bant Singh, on the allegation that there was an oral family settlement between the parties vide which the suit property was given to them (sons of Bat Singh) by Bant Singh, defendant. On 14.5.1993, Bant Singh filed written statement admitting the claim of his sons who were plaintiffs in the suit but before decree could be passed, Bant Singh filed another application on 2.12.1993 in which he stated that on that date (2.12.1993) at about 1.30 P.M. when he along with his wife Kamlesh Rani came to Civil Court, Dhuri, to consult his counsel about his case which was pending consideration for 6.12.1993, his sons along with two persons, namely, Mela Singh son of Natha Singh and Bhola Singh son of Mall Singh came here to pick them up forcibly. When Bant Singh and Kamlesh Rani refused to sit in the car, they got annoyed and threatened both Bant Singh and his wife that they would not be able to reach their house and see their children alive. Bant Singh, thus, prayed that persons named in the application may be punished.

6. From the record, I also find that another application was filed by Bant Singh on 17.1.1994 under Order 6 Rule 17 of Code of Civil Procedure for amendment of the written statement in which it was stated that the plaintiffs forcibly got his statement recorded in the Court as well as made him file the written statement in Court under coercion. He also brought out the circumstances under which he was made to admit the claim of his sons against his will and free consent. Along with this application, he filed amended written statement with the prayer that suit of the plaintiffs be dismissed with costs. Though reply to that application was invited, yet the same, on contest, was dismissed on 22.2.1994 and on the same very day, suit was decreed. Order dated 22.2.1994 passed by Sub Judge 1st Class, Dhuri,

dismissing the application for amendment filed by Bant Singh cannot be allowed to be sustained for the reason that before the suit could be decreed, it was brought to¹ the notice of the trial Judge the circumstances under which Bant Singh was pressurised to file written statement. The trial Judge ought to have allowed the application for amendment as it now stands settled that the admission can be withdrawn or can be allowed to be explained at any stage of the suit.

7. In the peculiar facts and circumstances of this case, the trial Court ought to have exercised its discretion in allowing the application for amendment of the written statement, instead of dismissing the same and decreeing the suit. It is unfortunate that for the sake of property, Bant Singh has been murdered, for which his sons are facing trial. I am purposely not making any comment on the conduct and the manner in which his sons behaved in Court before Vacations when Bant Singh feared danger of his life, lest it may prejudice the trial which they are facing.

8. Consequently, this civil revision is allowed and the application for amendment of the written statement shall stand allowed. As a consequence thereof, amended written statements which was filed along with application for amendment is ordered to be taken on record. The allegation in the suit that there was an oral settlement between the parties, has been denied in the amended written statement and there being no evidence to prove that there was any settlement of any kind between the parties whereby Bant Singh had agreed to give the property to his sons, there is no alternative but to dismiss the suit. Accordingly, the suit of the plaintiffs shall stand dismissed with no order as to costs.