

A SHROMANI GURDWARA PRABHANDAK COMMITTEE

v.

JASWANT SINGH

SEPTEMBER 4, 1996

B [K. RAMASWAMY AND FAIZAN UDDIN, JJ.]

*Code of Civil Procedure, 1908 :*

C *Order 6, Rule 17—Amendment of written statement—Filed at the end of trial—First written statement denied title of plaintiff—Second written statement set up title in plaintiff and pleaded gift of the property by the plaintiff—Mutually destructive—Rightly refused by the High Court—No interference called for.*

D CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
No. 16795 of 1996.

From the Judgment and Order dated 17.5.96 of the Punjab & Haryana High Court in C.R. No. 1023 of 1996.

Uma Datta for the Petitioner.

E The following Order of the Court was delivered :

F This special leave petition has been filed against the order of the High Court of Punjab & Haryana made on May 17, 1996 in Civil Revision No. 1023/96. The respondent instituted a suit for declaration of his title to the land admeasuring 134 canals 14 marlas in Hb. No 349 in village Japuwal, Tehsil and District Gurdaspur and also for possession of the property. It is his case that he is adopted son of one Isher Singh and that while he was in possession and enjoyment of the property, the petitioner had disputed his title to and interest in the said land filed a suit. The petitioner had pleaded in the written statement that Isher Singh had no title to the property and they set up the title in Darbar Sahib and that he had gifted the property in favour of Darbar Sahib. Subsequently, the parties, on the basis of issues raised, adduced evidence. At the end of the trial, the petitioner had filed an application under Order 6, Rule 17, Code of Civil Procedure, 1908 for amendment of the written statement pleading  
G that Isher Singh had gifted over the property to Darbar Sahib, Amritsar  
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Shromani Gurudwara Prabhandhak Committee and it was in possession as a legatee of the property. There was neither and issue nor any evidence adduced in that behalf. Therefore, the High Court has set aside the order on two grounds, namely, one though inconsistent pleas are permissible to be taken in the written statement, this case is not one of inconsistency but mutually destructive of the pleadings and two, for unexplained delay.

The learned counsel appearing for the petitioner in the High Court conceded that there is no explanation for not taking that plea in the written statement and for coming up with an application for amendment at a belated stage. However, he contended that they have remotely stated in the written statement that Isher Singh had gifted the property but by way of amendment the petitioner would be making specific amendment in the written statement. That contention was not accepted by the High Court.

The same contention has been reiterated before us. We find no force in the contention of learned counsel for the petitioner that the pleading does contain the gift clause in the original written statement and that it is sought to be elaborated by obtaining proper documents at this belated stage. It is settled law that the defendant can raise mutually inconsistent pleadings in the written statement but it is for the Court to consider whether the case can be properly considered in deciding the issue. But in this case the plea in the written statement is mutually destructive. In the first written statement, they have denied the title of Isher Singh himself. When such is the situation, how can they set up a title in him and plead gift made by Isher Singh in favour of the petitioner-Committee. Under these circumstances, the High Court has rightly refused to grant the plaint. Moreover, there is no explanation given as to why they came forward with his this plea at the belated stage after the parties had adduced the evidence and the matter was to be argued. Under these circumstances, we do not find any error of jurisdiction or material irregularity in the exercise of jurisdiction warranting interference.

The special leave petition is dismissed accordingly.