

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CR No.1225 of 2014 (O&M)  
Date of decision: 09.10.2015

Sat Parkash Goyal

... Petitioner

Vs.

Jagmohan Singh Waraich & others

... Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL**

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Harsh Aggarwal, Advocate  
for the petitioner.

Mr. Sumeet Mahajan, Senior Advocate with  
Mr. Ramneek Jawanda, Advocate  
for the respondents.

**AMIT RAWAL J. (Oral)**

Challenge in the present revision petition is to the impugned order dated 05.09.2013 (Annexure P-10), whereby, the application filed under Section 151 CPC, has been entertained by the trial Court and the operation of the *ex parte* judgment and decree dated 20.05.2013, has been stayed.

Mr. Harsh Aggarwal, learned counsel for the petitioner/decree holder submits that the respondents, who were not party in the *ex parte* judgment and decree before filing application under Section 151 CPC, had already filed appeal bearing No.49 of 2013 before the lower Appellate Court and the same has been decided

vide judgment and decree dated 12.03.2015 by holding as under:-

*“5. This Court finds itself in complete agreement with the opinion expressed by learned counsel for respondent/then plaintiff that since both these applicants are alleging themselves to be owner in possession of the suit property, therefore, they can always file a fresh separate suit if they apprehend any such invasion of their legal rights qua the same. Since the judgment and decree in question had declared present respondent No.1/then plaintiff to be owner and in possession to the extent of 1/4<sup>th</sup> share in the suit land, as such then plaintiff is not going to get this decree executed, rather there is no need for him to do so. Moreover, as a general rule a decision cannot said to be adversely affect a person until & unless, it operate res-judicata against him in any future suit. Since present applicants/appellants were not party to the previous suit, as such this decision will never operate as res-judicata against them, rather they have every right to file a separate suit to protect their interest, but they have no right to file present appeal. Moreover, since both these applicants/appellants happened to purchase the property from respondent No.2/ then defendant Megh Raj during the pendency of the present suit, therefore, they should have come forward to the*

*Court to get themselves impleaded in those proceedings of their own. Since they did not choose to do the needful in this regard for the reasons best known to them and added thereto if they want to claim any right qua this property, they are always entitled to file separate suit for the same, therefore, both of them being third party cannot be permitted to file the present appeal. Accordingly, present application filed along with present appeal stands dismissed and as consequent thereof present appeal is also dismissed being not maintainable. File be consigned to the record room.”*

Since the respondents have already been given liberty to challenge the judgment and decree by filing independent suit, application under Order 9 Rule 13 CPC along with interim application was not maintainable.

Mr. Sumeet Mahajan, learned Senior counsel assisted by Mr. Ramneek Jawanda, Advocate submits that applicants in the application, aforementioned, vide sale deed dated 09.03.2006, had purchased the suit property from one N.S.Bangu and Satnam Singh, whereas, vide two sale deeds dated 10.10.2012 and 14.05.2013, respondents No.1 and 2 purchased the property in dispute from the judgment debtor and therefore, their interest and title has been seriously prejudiced.

I have heard learned counsel for the parties and appraised the impugned judgments and decrees of the Courts below.

The provisions of Order 9 Rule 13 CPC clearly prescribes, that in case the party has availed remedy of appeal against the judgment and the same has been dismissed, thereafter, cannot be permitted to file application filed under Order 9 Rule 13 CPC. The trial Court, while entertaining the application, had also stayed the implementation of the judgment and decree by framing the issues.

Since the appeal of respondents, as noticed above, has been dismissed and they have been given liberty to avail their remedy by way of independent suit, therefore, in my view, impugned order is not sustainable as it tantamounts to have been passed without jurisdiction and even otherwise the application under Section 151 CPC for setting aside ex parte judgment and decree, was not maintainable.

In view of what has been observed above, the impugned order dated 05.09.2013, Annexure P-10, is hereby set aside to the extent, that entertaining of the application filed under Section 151 CPC. Resultantly, the application filed under Section 151 CPC stands dismissed and revision petition is accordingly allowed.

**(AMIT RAWAL)**  
**JUDGE**

**October 09, 2015**  
savita