

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 2975 of 2010
Date of decision : September 2, 2015

Santokh Singh

..... Petitioner

Versus

Joginder Kumar

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. S. S. Chauhan, Advocate
for the petitioner.

Mr. M. S. Talwar, Advocate
for the respondent.

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

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 22.5.2009 whereby the application filed by the petitioner-defendant under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 14.9.2004 has been dismissed and as well as the order dated 10.12.2009 whereby the appeal filed against the same met with the same fate.

Mr. S. S. Chauhan, learned counsel appearing on behalf of the petitioner-defendant-judgment debtor submits that the respondent-plaintiff has obtained ex-parte judgment and decree aforementioned by playing fraud upon the petitioner-defendant as the petitioner was never served with the summons of the suit filed on

17.6.2003 seeking specific performance of the agreement to sell dated 21.11.2000. He submits that the process server has managed to procure service of refusal in connivance with the plaintiff-Joginder Kumar as he is witness to the service of summons for 26.7.2003. The petitioner acquired knowledge of the ex-parte judgment and decree in the month of November, 2004 through one Lambardar. Accordingly, the application aforementioned filed with promptitude.

He further submits that neither wife of the petitioner-defendant nor petitioner-defendant put their thumb impression on the summons. Thus, both the courts below have committed illegality and perversity in dismissing the application.

Mr. M. S. Talwar, learned counsel appearing on behalf of the respondent-decree holder-plaintiff submits that the petitioner-defendant-judgment debtor had the knowledge of the suit, as from the perusal of the copy of the report on the summons it is revealed that petitioner Santokh Singh had received the summons and signed it and even his wife Kamaljit Kaur had also put her thumb impression. Thus, he had knowledge of pendency of the suit but he did not choose to contest the same, as the suit kept pending for almost one year and three months.

He further submits that the petitioner-defendant did not discharge the onus by examining hand writing expert to compare his thumb impression/signatures as the same were not his. Thus, prays for dismissal of the revision petition. However, in the aforementioned application under Order 9 Rule 13 CPC the petitioner-defendant has admitted execution of the agreement to sell.

I have heard learned counsel for the parties and appraised the paper book.

The trial court on the basis of the pleadings in the application and reply, framed the issues by placing the onus on the respective parties. The petitioner-defendant, except his bald statement examined another witness, Lambardar to the effect to prove the factum and acquisition of knowledge to ex-parte decree and did not examine any hand writing expert or lead any evidence to prove thumb impression/signatures on the summons as the same were not of his wife or his.

In the absence of any proof, an adverse inference is liable to be drawn under the provisions of Section 114 of the Indian Evidence Act, 1872. Both the courts below on realizing the aforementioned factum dismissed the application, in as much, as that the summons report Ex.R1 and R-2 proved on record by the decree holder-respondents. Nothing prevented the petitioner-defendant to lead evidence to rebut the same. In the absence of any direct and cogent evidence, the impugned order would not suffer from any illegality, much less perversity and cannot be said to be without jurisdiction.

There is no merit in the revision petition. The revision petition is devoid of merits and the same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 2, 2015
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