

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.2944 of 2011 (O&M)

Date of decision: 29.06.2015

Malkiat Singh

.... Petitioner

versus

Lal Singh

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pawan Kumar, Senior Advocate,
with Mr. Abhimanyu Batra, Advocate,
for the petitioner.

Mr. Parveen Hans, Advocate,
for the respondent.

K.Kannan, J. (Oral)

1. The revision petition is against the order allowing an application to set aside an ex parte decree. The plaintiff, who has secured a decree for specific performance, is the revision petitioner before this court.

2. The learned senior counsel appearing on behalf of the petitioner would explain that the trial Court has allowed the application only on the ground that the copy of the plaint had not been served along with the summons and there being a statutory breach of the provision under Order 5 CPC, the decree was bound to be set aside. The counsel would point out from the evidence of the bailiff that there was a clear assertion by him that the copy of the

plaint had been served at the time of service of summons and the evidence had not been properly read that has resulted in the miscarriage of justice.

3. The counsel for the respondent would point out that the parties are close relatives, the plaintiff being the grand son of the defendant. The defendant was illiterate and old and the plaintiff was attempting to fabricate the document purporting to be an agreement under the terms of which out of total consideration over ₹ 9 lakhs, all but a small proportion of the sale consideration was reported to have been paid. According to the defendant, there was no necessity for the defendant to enter into such an agreement and the plaintiff was trying to utilize the thumb-impression taken on some papers from an old man and knock off his properties. The defendant would point out to an unusual situation of the suit property having been instituted on 07.08.2008, service of summons was on 08.08.2008 and the date of hearing was posted to 09.08.2008. I cannot really believe that there could be such a haste even after service. The plaintiff has examined a local counsel as his own witness RW1 in the application to say that he was engaged by the defendant and he had filed vakalatnama on 09.08.2008. The cross-examination of this counsel reveals that the counsel had no previous acquaintance of the defendant, he had not received any fee and he knew the defendant to be of 42 years of age. The counsel for the respondent would state

that the defendant was more than 78 years of age and the plaintiff was playing to conspiracy to knock off his land by arranging through somebody to file a vakalatnama without any authority. The application for setting aside the decree has been filed on a plea that he never executed any agreement and he had never received any consideration.

4. Having regard to the closeness of relationship between parties and on a stout contest on the execution of the document as well as on a fact that he had not even engaged a counsel to represent him, I am of the view that the case would require an adjudication on a full-fledged contest and it will be grossly inequitable to deny a full opportunity to the defendant to contest the case. More so, in an unusual situation where the matter of service of notice on the defendant and the first day of posting having been brought about within such short dates that excites the suspicion of this court. I find no reason in interfering with the discretion exercised by the trial Court to allow for the ex parte decree to be set aside.

5 The order is maintained and the civil revision is dismissed. This order will not be in any way read as prejudicial to the disposal of the case nor will it be taken to be an expression of the merits of the respective claims of parties before the trial Court.

(K.KANNAN)
JUDGE

29.06.2015
sanjeev