

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

(1) CR No. 3582 of 2012 (O&M)
Date of decision: May 25, 2015

Harjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(2) CR No. 3586 of 2012 (O&M)

Lakhwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(3) CR No. 6447 of 2012 (O&M)

Narinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

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?**

Present: Mr. Vishal Aggarwal, Advocate,
for the petitioners.

Ms. Vandana Malhotra, Additional Advocate General,
Punjab.

K. KANNAN, J. (Oral)

1. In a suit for injunction by persons claiming to be in possession, the ex-parte decree was passed on respondents No. 2 and 3 having been served and the State of Punjab cited as the 1st respondent had not been served. The application for setting aside ex-parte was filed on the plea that

the plaintiffs in the suits, which are subject matter of the revisions in 3582 and 3586 of 2012, had already approached this court in a writ petition and failed in their action while they were seeking for injunction in respect of the trees on protected forest. The application for setting the aside ex parte decree was filed on the plea that the action of two of them to legitimize their alleged possession failed before this court and that the defendants must be given full opportunity to file the statement and contest the case on merits.

2. The court found that defendants No. 2 and 3 had been served and their service itself ought to have been sufficient but imposed cost of Rs. 30,000/- in one case and Rs. 10,000/- each in two other cases as condition to set aside the ex-parte decree. This orders allowing the applications on condition for setting ex-parte decrees are brought to challenge in the revisions.

3. The counsel appearing on behalf of the petitioners states that when there was valid service on respondents No. 2 and 3, there was no justification for their absence and the decree ought not to have been set aside. He would also urge that the relief of injunction itself had been granted only till they were evicted in due process of law and the State has actually taken action under the Public Premises Act against the plaintiffs who are the parties in CR Nos. 3582 and 3586 of 2012. There cannot be any prejudice for allowing the decree to be continued especially when the government has itself taken action for eviction under the Public Premises Act. Where the state has elected for a manner of securing ejectment, no purpose will be served by setting aside the ex-parte decree and allowing for parties to come for trial.

4. The counsel appearing for the respondents would urge that the

plaintiffs' possession itself has never been admitted and the property being protected forest are in possession of the State and even the trees are being planted and enjoyed by the State. The State action under the Public Premises Act against the plaintiffs in suits which are subject of revision in CR No. 3582 and 3586 of 2012 has done only on the advise of the court vide its noting in the file and it ought not be taken as an admission of the State that the respective plaintiffs are in possession of the properties. The counsel would also explain that the relief of injunction till evicted in due course of law is specifically mentioned in one suit and in two other suits relief of injunction has been granted without any such restriction. The decree cannot be allowed to stand in the light of the nature of the property as pleaded by the State and immense hardship that would be caused if the ex-parte decree is allowed to remain. The counsel would state that for the sheer indiscretion of respondents No. 2 and 3 in not making appearance and contest the suit, the court has imposed stiff costs ranging from Rs. 30,000/- to 10,000/- and that discretion need not be interfered with in revisions.

5. The counsel for the petitioners points out that the 1st defendant has also been served and it was admitted so in the cross-examination while the counsel for the State would refer to the zimni orders that will make reference to the fact that the 1st defendant has not been served. Having regard to the fact that the 1st respondent-State was found to be not served and having further regard to the fact that the property in dispute is claimed to be protected forest, I am of the view that it will be only in the interest of justice that the cases are decided on a full fledged contest. The action for ejectment under the Public Premises Act may have been under certain compulsions, but I am not prepared to examine the correctness or otherwise

of the explanation offered by the State. Further, I am of the view that if the plaintiffs have approached this court and failed in their action for protection against the trees from being cut, then the plaintiffs cannot march with the decree for injunction, for, the relief of injunction is invariably discretionary and the court will examine the conduct and the prima facie nature of the plaintiffs' case before such a relief could be granted. I do not think the institution of a petition under the Public Premises act will make relevant the conduct of the trial and the court below sufficiently punished the parties by imposing stiff costs which ought to prevail. I find no illegality for intervention.

6. All the revisions are dismissed, upholding the holders already passed.

May 25, 2015
prem

(K.KANNAN)
JUDGE