

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 3563 of 2014 (O/M)
Date of decision : 18.8.2015

Balbir Singh

..... Revisionist

Versus

Balwinder Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.K. Singla, Advocate, for the revisionist.

None for respondent No. 1.

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

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KULDIP SINGH, J. (ORAL)

None has appeared for respondent No. 1, despite second call.

I have heard the learned counsel for the revisionist and have also carefully gone through the file.

Impugned in the present revision is the order dated 9.5.2014 (Annexure-P-5), passed by the learned Additional Civil Judge, Senior Division, Phillaur, vide which in an application filed by the present revisionist Balbir Singh/defendant No. 5 before the lower

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Court for setting aside the ex-parte proceedings against him, he was allowed to join the proceedings from the said stage i.e. the stage of rebuttal and arguments.

The plea of the learned counsel for the revisionist is that defendant No. 5/revisionist was not properly served and that the substitute service by way of publication is no service in the given circumstances. Therefore, the ex-parte proceedings against him should be set aside.

It is necessary to go into the controversy raised in the suit. The brief facts of the case are that Balwinder Singh (plaintiff before the lower Court), who happens to be the brother of present revisionist, had filed a suit for declaration that he is co-owner in possession to the extent of 1/5th share in the disputed property on the basis of Will dated 26.10.1988. The sale deed dated 10.2.2003, in favour of defendant No. 5/revisionist, has also been challenged.

The perusal of the impugned order shows that the address of defendant No. 5/revisionist was given as 'village Khokhewal, Tehsil Phillaur, District Jalandhar'. However, a perusal of the power of attorney, placed on file, shows that defendant No. 5/revisionist is in fact an Non-Resident Indian ('NRI') and is living in Canada. The copies of passport and driving licence have also been produced. The plaintiff/respondent No. 1 and the present revisionist are the real brothers and it cannot be believed that the

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plaintiff/respondent No. 1 will not be knowing that his brother is permanently living in Canada though he is having land in India. The sale deed in favour of defendant No. 5/revisionist has been challenged. The plaintiff/respondent No. 1 deliberately gave the Indian address of defendant No. 5/revisionist, concealing that he is actually living in Canada and thereby misleading the Court about the permanent address of defendant No. 5/revisionist. In this case, the substituted service was effected by way of publication. Once, it comes out that the plaintiff/respondent No. 1 was knowing about the actual and permanent address of defendant No. 5/revisionist and intentionally failed to furnish the same to the lower Court, the substitute service by way of publication on defendant No. 5/revisionist at his Indian address i.e. 'village Khokhewal, Tehsil Phillaur, District Jalandhar' cannot be called proper service in the eyes of law.

The learned counsel for the revisionist has informed this Court that the plaintiff/respondent No. 1 himself is an NRI, settled in Canada and he has also not given his correct address as well. In this way, he has concealed his correct address as well as address of his brother defendant No. 5/revisionist and misled the Court to proceed ex-parte against him. Since the sale deed in favour of defendant No. 5/revisionist has been challenged and plaintiff's claim that the Will is in his favour, defendant No. 5/revisionist cannot

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effectively contest his case without dis-proving the Will and proving the sale deed in his favour. This can only be done by filing the pleadings and leading evidence. In such circumstances, the impugned order dated 9.5.2014 (Annexure-P-5), passed by the learned Additional Civil Judge, Senior Division, Phillaur, is set aside. The ex-parte proceedings against the present revisionist are also set aside. The present revisionist is permitted to file written statement and thereafter, lead evidence in support of his case.

The revision is accordingly allowed.

(KULDIP SINGH)
JUDGE

18.8.2015
sjks