

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4350 of 2015 (O&M)

Date of Decision.21.12.2015

Kulwant Singh

.....Petitioner

Vs.

Inderjit Kaur and another

.....Respondents

Present: Mr. Krishan Sehajpal, Advocate
for the petitioner.

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?

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K. KANNAN J. (ORAL)

1. The decree passed in the year 2008 was for the relief of injunction claimed by the sister-in-law against her brothers-in-law. Her contention was that the property belonged to her deceased brother and when there was also problem about the enjoyment of the property and the lands, she filed a case against her mother-in-law. The case resulted in compromise allowing for joint possession of the house property by the plaintiff and her mother-in-law. Her mother-in-law died and before her death, she also vacated herself to live in some other place. The defendants contested suit by filing the written statement and contending that she had remarried after the death of her husband Pal Singh and that she is not in possession of the property. The defendants did not give any evidence after filing the written statement and the Court granted decree in June, 2008. The application to set aside the ex parte decree was filed only by one of the defendants who is the petitioner before this Court nearly 2 ½ years later. There was not even an application filed under

Section 5 of the Limitation Act to explain as to why the petition was not filed within a period of 30 days as required under Article 123 of the Limitation Act. The Court found that there was no justification given. His own contention that he was in possession of property or that he had believed that his brother was prosecuting the case turned out to be false. The petitioner who entered the contest along with the brother and who had allowed his brother the indiscretion of allowing the decree to be passed with ex parte, will suffer by the consequence of the indiscretion of himself and his brother and he cannot have special equities. There was not even an explanation as to why no application was filed to condone the delay of more than 2 ½ years. The lower Court's consideration on application for setting aside the ex parte decree itself was barred by limitation. The counsel argues that he came to know about the decree only when she was making an attempt to sell the property after selling the agricultural lands. The issue of knowledge is irrelevant in a situation where there had been service of summons under Article 123 of the Limitation Act. Even if the application must itself be taken as containing an inherent prayer for condoning the delay, the reason given is hardly convincing. I have already discussed the issue of an over-reliance by the petitioner on his brother cannot avail to him any special equities.

2. There is no reason for making an interference with the decisions given by the Courts below. The revision petition is dismissed.

(K. KANNAN)
JUDGE

December 21, 2015
Pankaj*