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

CR No.4480 of 2015

Date of decision: July 17, 2015

Kamal Kapoor

.....Petitioner

Versus

Surmukh Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. C.L. Premy, Advocate
for the petitioner.

SABINA, J

Petitioner has filed this petition challenging the orders dated 23.08.2013 and 22.01.2015.

Learned counsel for the petitioner has submitted that the petitioner had no knowledge qua the pendency of the suit. In fact, petitioner had never received any summons from the Court. Petitioner came to know about the decree on 20.04.2005 and immediately, he moved the application for setting aside the *ex parte* decree passed against him.

Surmukh Singh-respondent had filed suit for possession by way of specific performance of agreement dated 24.01.1989 against Darshan Lal and Sukhwinder Kaur. During the pendency of the suit, Darshan Lal died and his legal representatives were ordered to be brought on record. Raman Kapoor son of Darshan Lal appeared and contested the suit, but later defendants were proceeded *ex parte* vide

order dated 17.07.2000. Trial Court vide judgment/decreed dated 24.07.2000, decreed the suit of the plaintiff for possession by way of specific performance of agreement to sell dated 24.01.1989. Thereafter, petitioner moved an application under Order 9 Rule 13 of Code of Civil Procedure, 1908 ('CPC' for short) for setting aside the *ex parte* judgment/decreed dated 24.07.2000.

The case of the petitioner was that he came to know about the *ex parte* decree on 20.04.2005 from Didar Singh. However, to support the said plea, petitioner had failed to examine Didar Singh as a witness. It has been noticed by the Courts below that Raman Kapoor brother of the petitioner had appeared before the trial Court after the death of Darshan Lal. Further, the land in question had been sold to Takht Singh. It has been noticed by the trial Court that the petitioner had admitted in his cross-examination that he was being accompanied by Avtar Singh son of Takht Singh in the Court. The objections filed by Takht Singh had already been declined by the executing Court vide order dated 29.03.2005. In these circumstances, the learned Courts below rightly held that the application moved by the petitioner for setting aside the *ex parte* judgment/decreed was liable to be dismissed. Since the property in question had already been sold, it is evident that the petitioner had no right, title or interest left in the property in question. It appears that after the objection

petition filed by Takht Singh (purchaser) was dismissed on 29.03.2005, the present application was moved by the petitioner for setting aside the *ex parte* judgment/decreed at the instance of Takht Singh as the petitioner was being accompanied by the son of Takht Singh while pursuing the application.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

July 17, 2015
mahavir