

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

**CR No.5094 of 2014 (O&M)
Date of decision: 14.09.2015**

Kashmir Kaur and others

...Petitioners

versus

Surjit Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sandeep Bansal, Advocate,
for the petitioners.

Mr. Ankur Soni, Advocate,
for respondent No.1.

None for respondent No.2.

RITU BAHRI, J.

Legal heirs of Balbir Singh-defendant have come up in this petition against the orders dated 14.08.2013 and 02.07.2014 (Annexures P-2 and P-4) passed by the Additional Civil Judge (Senior Division), Hoshiarpur and the District Judge, Hoshiarpur respectively, whereby application under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree dated 25.11.2009, has been dismissed.

Surjit Singh-plaintiff (respondent No.1 herein) had filed a suit for possession by way of specific performance of agreement to sell dated 22.06.2004 in respect of shop bounded as East: Road, West: property of Bishan Dass, North: property of Bishan Dass, South: property of Hardeep Singh, situated at Dholbaha road Haryana, Tehsil and District Hoshiarpur.

The said suit was decreed exparte on 25.11.2009 against Balbir Singh (since

deceased) and Avtar Singh. Claim of the applicant-petitioners (legal heirs of Balbir Singh) was that Balbir Singh was never personally served in the original suit and his name has been wrongly given with an intention to commit fraud upon him and to dispossess him from the demised premises.

Upon notice, respondent-plaintiff filed reply to the application and stated that Balbir Singh was aware of the pendency of suit since 31.08.2006 when he was served in the original suit. He was also known as Palli and this fact had been acknowledged by him on the summons. The allegations that a wrong name was given in the original suit was false. After the suit had been decreed, the Local Commissioner was appointed by the Court, who had executed the sale deed in favour of respondent-plaintiff on 30.01.2011. It was further stated that applicant-Balbir Singh was aware about the decree dated 25.11.2009 and the report submitted by the Local Commissioner.

From the pleadings of the parties, following issues were framed:

1. Whether there are sufficient reasons for setting aside exparte judgment and decree dated 25.11.2009? OPA
2. Whether application is within time? OPA
3. Whether application is not maintainable? OPR
4. Relief.

Trial Court, after going through the record, observed that Paramjit Singh, Process Server (RW-1) did not obtain the signatures or witness of any resident of locality where he allegedly served summons upon the applicant. Mere testimony of the process server was held not sufficient to prove that the service had been effected on the applicant-defendant No.2 in the original suit. Accordingly, issue No.1 was decided in favour of

applicant-Balbir Singh.

Balbir Singh-applicant himself appeared as AW-1 and in his cross-examination, admitted that respondent (plaintiff) had visited his shop in the first week of January, 2012 and directed him to deliver possession thereof. The application for setting aside the exparte judgment and decree was filed on 25.02.2012, which was beyond the period of 30 days from the first week of January, 2012. Therefore, the application was not filed within limitation. With these observations, issue No.2 was decided against the applicant and in favour of the respondent. Ultimately, the application for setting aside the exparte judgment and decree was dismissed on 14.08.2013.

Appeal against this order was dismissed by the District Judge, Hoshiarpur vide judgment dated 02.07.2014. However, finding on issue No.1 was answered in favour of the respondent (plaintiff). It was observed that applicant-Balbir Singh had earlier filed a suit (Ex.A2) against one Antaryami and Surjit Singh claiming that Antaryami was owner in possession of the shop and he had agreed to sell the said shop in his favour by executing agreement to sell dated 08.02.2006. In this suit Surjit Singh-respondent No.1 filed written statement (Ex.A3), wherein a specific plea qua judgment and decree dated 25.11.2009 was raised. Hence, in the suit filed by Balbir Singh against Antaryami etc., he had acquired the knowledge of judgment and decree dated 25.11.2009. Further, Balbir Singh while appearing as AW-1 had admitted that he got the knowledge about decree in question (Ex.A4) in the first week of January, 2012. Punjab National Bank had filed a suit against Avtar Singh for recovery of Rs.2,10,855/-, which was decree vide judgment (ExA5). This decree was against the original owner Avtar Singh and the present applicant-Balbir Singh being a subsequent purchaser had

stepped into the shoes of vendor and cannot acquire greater right, title or interest in the property than acquired by his vendor. A perusal of election identity card (Ex.A6) and driving licence (Ex.A7), showed that Balbir Singh is the son of Darshan Singh. Moreover, as per the statement of Ravinder Singh, Bailiff (RW-2), in Execution No.1/10 dated 01.02.2010, titled as 'Surjit Singh Vs. Avtar Singh', he had gone to the shop in question and found Palli (JD) present there, but he refused to vacate the shop as per the orders of the Court. Thereafter, he made a report (Ex.R2) to the effect that there was apprehension of breach of peace. This report was witnessed by Ranjit Singh, Tarsem Singh and Jaswant Singh with whom AW-1 had no enmity. Paramjit Singh, Process Server (RW-1) after visiting the spot had ascertained, as if Balbir Singh alias Pali is one and the same person. Since summons were issued in the name of Pali son of Darshan Singh, resident of Octroi Post, near DAV School for Boys, Haryana, statement of RW1 became believable that Pali and Balbir Singh was one and the same person and that is why AW-1 had raised resistance in the process of execution of warrants of possession (Ex.R2). Further, Sukhdev Singh, Process Server (RW-3) stated that on 12.02.2010, he had gone to the spot for delivery of summons to JD-Pali son of Darshan Singh, but he refused to accept the summons. In this regard, he has proved his report as Ex.RW3/A. He had made an enquiry about Pali from the adjoining shopkeepers. Jaswant Singh (RW-4), who had accompanied the Court officials on 03.01.2012, stated that Balbir Singh @ Pali had created trouble on account of which, there was apprehension of breach of peace.

After going through the statements of aforesaid witnesses, the lower appellate Court has rightly reversed the finding on issue No.1 and

decided the same in favour of respondent-plaintiff.

After going through impugned order/judgments, this Court is of the view that there was sufficient evidence on the file that applicant-Balbir Singh was duly served in the suit filed by Surjit Singh-respondent No.1 and he had the knowledge of exparte judgment and decree dated 25.11.2009. It has also been proved on record that Balbir Singh and Pali is one and the same person. Furthermore, in his cross-examination, Balbir Singh (AW-1) had himself admitted that he had acquired the knowledge qua exparte judgment and decree in the first week of January, 2012. However, he filed the application for setting aside the said judgment beyond the period of 30 days. Therefore, the said application has been rightly dismissed by both the Courts below.

No ground is made out to interfere in the impugned judgments/orders.

Dismissed.

(RITU BAHRI)
JUDGE

14.09.2015
ajp