

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

Civil Revision No.667 of 2015

Date of decision: 13.08.2015

Sukhdev Singh

... Petitioner

versus

Balwant Singh Dhillon and others

... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Munish Gupta, Advocate,
for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The suit to challenge the sale executed by the plaintiff's brother was founded on a plea that the first defendant-brother was acting on a power of attorney which was forged and fabricated and consequently, the sale made in favour of the defendants 2 and 3 was not valid. The defendants 2 and 3, who had purchased the property, had sold a portion of the property to defendants 4 to 7 and at the trial of the suit, defendants 1 to 3 had remained ex parte and only defendants 4 to 7 entered the contest. The suit had been filed in the year 1998 and the decree itself was passed in the year 2003. The defendants 4 to 7 had preferred an appeal and when the appeal was

pending, the application was filed by the 3rd defendant to set aside the ex parte order issued against the 3rd defendant. The courts have held that since defendants 4 to 7 had preferred an appeal, the explanation to Order 9 Rule 13 CPC will exclude a right of anyone of the defendants to approach the very same court for setting aside an ex parte decree when the appeal was pending.

2. I have no difficulty in understanding the point made by the counsel for the petitioner-applicant that the proposition is not correctly stated, but if we must examine the issue on exigency and to see whether there is any bona fides in the application, I would hold that the 3rd defendant simply had no bona fide in approaching the court. The application was filed nearly 6 years later on a plea that he had not been actually served. The evidence before the court was that the service had been taken only to the village address where he was known to be last residing and the court had ordered substituted service as well. It took note of the fact that in the appeal filed by defendants 4 to 7, the 3rd defendant had been served on the very same address given in the plaint and if he could take notice of the appeal, there was simply no justification in pleading ignorance about the proceedings at the trial Court. The contention that the 3rd defendant did not know about the suit till he was served when notice in appeal filed by defendants 4 to 7 was found to be not true and held this to be an additional ground for denying the benefit of setting

aside the ex parte decree against the 3rd defendant. I do not find that there is any error in the approach of the courts below for an intervention in revision. Substantial justice has been done, for, the defendants, who could entered contest on the purchases, had contested the case and had also preferred an appeal against the judgment. It would seem to be a more motivated action to open a fresh round of litigation of what was already decided in favour of the plaintiff and which had been challenged in appeal of defendants 4 to 7. If the 3rd defendant was truly aggrieved, he would still have a right to challenge the correctness of the decision at the appellate court itself in which the petitioner had also been a party-respondent. The court will also examine any point canvassed even by a respondent who had not appealed against the judgment, by resort to power under Order 41 Rule 33 CPC. There will be substantial injustice to a person who has taken a decree after a full-fledged contest from the defendants 4 to 7 to be forced to a fresh trial at the instance of the petitioner. The subsequent purchasers had surely a strong stake to contend for their pleadings and defence ought to be taken as substantial opportunity given at the trial.

3. Revision petition is dismissed but with the observations made above.

(K.KANNAN)
JUDGE

13.08.2015
sanjeev