

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.6732 of 2013

Date of Decision: 12.01.2015

Ajmer Singh and another

...Petitioners

Versus

Varinderpal Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE R.P. NAGRATH

1. *Whether Reporters of the 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?*

Present: Mr. Nirmal Singh Kandhola, Advocate
for the petitioners.

R.P. Nagrath, J.

Petitioners have invoked the jurisdiction of this Court under Article 227 of the Constitution of India seeking to set aside the orders dated 13.12.2012 (Annexure P-3) passed by the trial Court whereby application for restoration of the suit dismissed in default, was dismissed and 12.07.2013 (Annexure P-4) in appeal affirming the order Annexure P-3.

Petitioners filed suit for declaration that they are owner of $\frac{1}{2}$ share in the disputed property on the basis of Will dated 15.01.1979 executed by Mohinder Singh, grandfather of the parties.

The suit was dismissed in default under Order IX Rule 8 of the Code of Civil Procedure on 13.12.2004. Application for restoration of the suit was filed on 17.12.2007 i.e. more than three years after the dismissal of the suit in default. The explanation furnished by the petitioners in the application Annexure P-2 was that they were earlier residing at BD 25, Janak Puri, New Delhi where they lived upto the year 2005 and then they shifted their residence to WZ 127, Gali No.7, Shiv Nagar, Delhi.

After institution of the suit, counsel for the petitioners promised to send them message whenever their presence would be required, but no such message was received because the petitioners had changed their residence. Mother of the petitioners died on 26.10.2007. Petitioners came to Village Manela, Tehsil Khumano where the land in question is situated and were informed about the suit having been dismissed in default on 13.12.2004.

I have heard learned counsel for the petitioners, perused the impugned orders passed by both the Courts below and also the paper book.

There was no representation for the respondents before the trial Court, despite service. Petitioner Ajmer Singh appeared as AW1 in support of his case. Finding no merit, the learned trial Court dismissed the application. When the order of trial Court was challenged in appeal, the respondents contested the same. The trial Court observed that despite last opportunity granted in the case, the plaintiffs failed to produce any witness and when the suit was

adjourned to 13.12.2004, none appeared and the suit was dismissed in default. The trial Court has observed that this was a case which was got dismissed in default because no witness was produced despite last opportunity having been granted.

The present is not a case where ex parte judgement and decree is sought to be set aside for non-service of defendants or that on coming to know of the ex parte decree that application for setting aside was filed within a period of one month of the date of knowledge. Herein the plaintiffs themselves are seeking restoration of the suit dismissed in default, after expiry of a period of three years. The plaintiffs are supposed to be quite vigilant to know progress of suit and they cannot be believed on the excuse that their advocate was required to inform them to appear in the suit. The learned trial Court was quite correct in the observation that limitation for filing application for restoration of the suit dismissed in default commences from the date of dismissal and not from the date of knowledge.

Annexure P-2 is application for restoration dated 17.12.2007 and no prayer was even made for condonation of delay in terms of Section 5 of the Limitation Act, despite there being about 03 years of delay in moving the application.

It is quite apparent that petitioners just filed a suit to claim exclusive title on the basis of a Will but ultimately, may be happy with the natural succession to the estate of the deceased.

From the above, discussion it is found that the Courts below have followed the principle applicable to the case and there is

no scope of interference in the impugned orders by this Court in exercise of revisional jurisdiction.

Dismissed.

12.01.2015
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(R.P. Nagrath)
Judge