

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.7332 of 2015
Date of Decision: November 03, 2015

Surender & others

...Petitioners

Versus

Sant Ram & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.C.B.Goel, Advocate,
for the petitioners.

AMIT RAWAL, J. (Oral)

The challenge in the present revision petition is to the impugned order dated 14.10.2015, whereby the application filed under Order 9 Rule 13 of the Civil Procedure Code for setting-aside of the *ex-parte* judgment and decree dated 18.8.2009 and *ex-parte* order dated 7.11.2005, has been allowed.

Mr.C.B.Goel, learned counsel appearing on behalf of the petitioner-plaintiffs submits that the suit was filed on 27.8.2005 challenging the sale deed dated 15.4.2005, alleged to have been executed in favour of the respondent-defendant, as there was no exchange of sale consideration. The respondent-defendant was served through munadi, but he did not appear and ultimately was proceeded *ex-parte* on 7.11.2005 and thereafter

the *ex-parte* judgment and decree came to be passed. In the application under Order 9 Rule 13 CPC filed on 18.1.2010, it was stated that the respondent-defendant acquired the knowledge of the *ex-parte* judgment and decree only on 29.12.2009 on the premise that he had surrendered to the police in the month of October, 2006 and from 29.5.2005, i.e., the alleged date of murder of Jogi Ram, he did not remain in his village or at his home or nearby village and, therefore, FIR No.121 dated 29.5.2005 was registered and he was acquitted on 1.12.2006 in the said case. The knowledge of the *ex-parte* judgment and decree was acquired by him when he visited the office of the Patwari in connection with some work, where the Halqa Patwari disclosed the factum of the aforementioned *ex-parte* judgment and decree. He further submits that since Sant Ram did not have any title in the property, which has allegedly been sold by him on 31.5.2007 on the basis of the sale deed dated 15.4.2005, therefore, no right or title accrued to him to contest the suit. He further submits that the trial Court has committed illegality and perversity in not noticing the fact that once he was acquitted on 1.12.2006 in the criminal case, no explanation, much less reasons have been assigned in not filing the application for a period of four years. The delay of four years itself is a sufficient ground for non-suiting the respondent-defendant.

I have heard the learned counsel for the petitioner-plaintiffs and have appraised the paper book.

It is a matter of record that the respondent-defendant was proceeded *ex-parte* on 7.11.2005 and at that time, he was though absconding, but surrendered to the police in the month of October, 2006 and

ultimately was acquitted on 1.12.2006. Thereafter, moved the present application stating therein that he acquired the knowledge of the *ex-parte* judgment and decree on 29.12.2009 and thereafter applied for the certified copy of the same. Accordingly, the application as filed in January, 2010. Even if Sant Ram had allegedly sold the property to a third party, the fact remains that there was *ex-parte* judgment and decree against him.

In my view, there was no service by beat of drum under Order 5 Rule 20 CPC on the day when the respondent-defendant was proceeded *ex-parte* as he was not residing in the village, much less had the knowledge of the pendency of the suit. The pendency of the suit and as well as the *ex-parte* judgment and decree came to his knowledge only in the year 2009, for the reason, that no such overt act on the part of the plaintiffs was done to give any apprehension or suspicion.

I do not intend to differ with the findings rendered by the trial Court, whereby the application filed under Order 9 Rule 13 CPC has been allowed and the respondent-defendant has been given liberty to contest the same by filing the written statement. The order cannot be said to have been passed without jurisdiction. The petition is devoid of merits and accordingly the same is dismissed.

Nothing observed in this order shall be construed as an expression of opinion on the merits of the pending suit.

November 03, 2015
ramesh

(AMIT RAWAL)
JUDGE