

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

CR No.716 of 2012 (O&M)  
Date of decision : 03.12.2015

Balbir Singh

...Petitioner

Versus

Malkiat Kaur and ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Amit Dhawan, Advocate for the petitioner.

Mr. Viney Puri, Advocate for  
Mr. D.K. Bhatti, Advocate for the respondents.

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**AMIT RAWAL, J. (Oral)**

The petitioner-plaintiffs are aggrieved of the order dated 05.01.2012 (Annexure P-9), whereby appeal filed against the order dated 10.12.2010 dismissing the application filed under Order 9 Rule 13 CPC, has been allowed.

Mr. Amit Dhawan, learned counsel appearing on behalf of petitioner submits, that civil suit at the instance of the plaintiffs was against none others but against brothers claiming declaration vis-a-vis the property left by their father on the basis of the Will dated 25.05.1997, was filed on

21.11.2002. Defendants No.1 and 3 were served on 28.11.2002 but were proceeded ex parte. Defendant No.2-respondent was not served. The summons were issued to defendant No.2 which were received back unexecuted. On 08.11.2004, the trial Court again issued notice to defendant No.2 for 21.12.2004. On the next date, Kulwinder Kaur, attorney of defendant No.2 appeared in person and filed copy of the power of attorney dated 21.06.2004 and the case was adjourned for filing written statement. However, on 17.01.2005, none appeared on behalf of defendant No.2 and she was proceeded ex parte. He submits that even in the cross-examination she admitted the factum of filing of the suit in 2002 and as well as the execution of the power of attorney in favour of Kulwinder Kaur w/o plaintiff No.1. Thus she had the knowledge of the pendency of the suit and, therefore, the application filed on 13.07.2007 under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 05.10.2006 was barred by law of limitation.

The trial Court rightly dismissed the application. However in appeal, appellate Court has accepted the appeal on the premise that entire cross-examination has to be read alongwith examination-in-chief, in essence, allowed the application under Order 9 Rule 13 CPC.

Mr. Viney Puri, Advocate for Mr. D.K. Bhatti, learned counsel appearing on behalf of respondents submits that Kulwinder Kaur intentionally absented and did not put in appearance and nor did she inform her absence to respondents-defendants and thus there was breach of trust. It is in these circumstances, after acquiring the knowledge, the application was filed on 13.07.2007, therefore, the application was not barred by law of

limitation. There is no illegality and perversity in the order passed by the lower Appellate Court, whereby application under Order 9 Rule 13 has been allowed.

I have heard learned counsel for parties and appraised the paper book.

Malkiat Kaur defendant No.2-respondent in cross-examination admitted that she acquired the knowledge of factum of the suit in the year 2002 and also execution of the power of attorney in favour of Kulwinder Kaur on 21.12.2004. The relevant portion of the cross-examination reads thus:-

*“My brothers Major Singh and Balvir Singh filed the present suit in the court in the year 2002. I came to know after 2 year of the institution of present suit that my brothers have filed a civil suit against me in the Court at Nakodar. Then I gave power of attorney in favour of Kulwinder Kaur on 21.12.2004.”*

Though thereafter she submitted that she had got power of attorney cancelled but she did not produce its proof. The petitioner-plaintiff had claimed the declaration on the basis of the Will dated on 25.05.1997 executed in his favour by father. Had there been actually dispute between the siblings, the respondent would not have given a power of attorney in favour of Kulwinder Kaur w/o plaintiff No.1. In fact it appears that there was an arrangement between the brothers and sisters. It is in these circumstances, the factum of cancellation of the power of attorney has not been proved, much less, same has been brought on record.

The findings rendered by the lower Appellate Court that cross-

examination has to be read altogether, in my view, erroneously formed an opinion that respondent-defendant was not aware of the ex parte proceedings, much less, judgment and decree dated 05.10.2006. Once the defendant has admitted in the cross-examination, the factum of filing of the suit in 2002 and execution of the power of attorney, the application in the year 2007 without there any application for condonation of delay was barred by law of limitation.

Keeping in view the aforementioned facts, impugned order dated 05.01.2012 (Annexure P-9) is set aside.

Application filed under Order 9 Rule 13 CPC is hereby dismissed.

Revision petition is hereby allowed.

**03.12.2015**

*pawan*

**(AMIT RAWAL)  
JUDGE**