

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

1. RSA No.342 of 2008 (O&M)
Date of decision : 27.08.2015

Kidar Singh

...Appellant

Versus

Sahib Kaur deceased through LRs and ors.

...Respondents

2. CR No.36 of 2013 (O&M)
Date of decision : 27.08.2015

Govardhan & ors.

...Petitioners

Versus

Kidar Singh

...Respondent

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. Mahavir Sandhu, Advocate
for the appellant (In RSA No.342 of 2008)
for the respondent
(In CR No.36 of 2013)

Mr. C.B. Goel, Advocate for the petitioners
(In CR No.36 of 2013)

Mr. Amit Jain, Advocate for the respondent No.1.
(In RSA No.342 of 2008)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of CR No.36 of 2013, titled as Govardhan & ors. Vs. Kidar Singh and RSA No.342 of 2008, titled as Kidar Singh Vs. Sahib Kaur deceased through LRs and ors., as the same are inter-connected.

The litigation between the parties has a chequered history as dispute is with regard to the estate of Rattan Singh. The appellant in RSA is claiming the estate of Rattan Singh vide Will dated 30.01.1968, whereas respondent in appeal and petitioner in Civil Revision are claiming the estate of Rattan Singh by way of natural succession and on the basis of decree dated 31.10.1984 executed by Kidar Singh in case titled as Sahib Kaur Vs. Kidar Singh.

It is a matter of record that Sahib Kaur daughter of Rattan Singh filed the civil suit on 05.08.1976 challenging the Will dated 30.01.1968 and said civil suit was dismissed and appeal filed against the same was also dismissed and RSA No.346 of 1982 came to be filed. During the pendency of the RSA, Kidar Singh suffered a decree in favour of Sahib Kaur on 31.10.1984 in respect of suit land measuring 284 kanal 19 marla. On 20.07.1987, application had been filed by Kidar Singh for recalling of decree dated 31.10.1984 and the same was dismissed in default on 19.03.1991. No efforts have been made for restoration of the application. However, in 1992 i.e. on 21.02.1992 Kidar Singh suffered a decree in favour of his son Vijender Singh. It is said decree which has been

challenged by Sahib Kaur in the suit No.222/1994. Out of which, the present Regular Second Appeal has been filed. The said suit was filed on 30.05.1994 and decreed by the trial Court and appeal filed against the same has been dismissed, therefore, Regular Second Appeal No.342 of 2008 has been filed.

Regular Second Appeal No.346 of 1982 was withdrawn by Sahib Kaur on 26.04.1993 for the reasons that Kidar Singh in the meantime suffered a decree dated 31.10.1984 in her favour. After 16 years, application dated 28.03.2007 was filed seeking restoration of the application filed for recalling of the decree. The said application had been allowed by the trial Court, vide order dated 27.10.2012, impugned in Civil Revision aforementioned.

Mr. Mahavir Sandhu, learned counsel appearing on behalf of appellant in RSA and respondent in revision petition submits that once the Will dated 30.01.1968 executed by Rattan Singh in favour of Kidar Singh has been upheld in RSA, there was no occasion for him to execute the decree in favour of Sahib Kaur in 1984. Basically fraud was practiced upon Kidar Singh and accordingly, application in July 1987 was filed and, thereafter RSA was compromised by Sahib Kaur. Compromise would entail in upholding of the findings given by the trial Court, whereby Will dated 30.01.1968 has been upheld. He submits that entire controversy revolves around adjudication of the civil revision petition and in case civil revision petition is dismissed, RSA would be rendered infructuous.

Mr. C.B. Goel, learned counsel appearing on behalf of

petitioners/LRs of Sahib Kaur in CR No. 36 of 2013 submits that no explanation, much less, reasonable explanation has been given in the application seeking restoration of the application after a gap of 16 years. The story coined and projected in the application that it is only when Kidar Singh's counsel filed RSA against judgment and decree passed in Civil Suit No.222 of 1994, Kidar Singh acquired the knowledge, of dismissal in default, of application dated 20.07.1987.

Mr. Amit Jain, learned counsel appearing on behalf of respondent No.1 in RSA submits that both the Courts below have rendered findings on facts and law. There is no illegality and perversity, much less, no substantial questions of law arises for adjudication of the present matter. He further submits that Courts below have rendered a facts of law which cannot be challenged under Section 100 of the Code of Civil Procedure, in view of chequered history of the case particularly the decree dated 31.10.1984 which is still holding the field.

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

In application Annexure P-3 (In CR), it is revealed that respondent (In CR) and appellant (In RSA) acquired the knowledge of dismissal in default of the application moved for recalling of the decree dated 31.10.1984, when Kidar Singh engaged the services of an advocate for filing the appeal against the judgment and decree rendered in Civil Suit No.222 of 1994.

Parties cannot remained silent or lie in slumber for infinite

period in not ascertaining outcome of the application instituted at their behest. The relationship between the advocate and the client is in fiducious capacity. Both the abovementioned persons are required to remain in constant touch with each other with regard to the pendency of the petition. The law of limitation prescribes a period of 30 days in filing the application for restoration but here in this case no such application for condonation of delay had been filed as alleged acquisition of knowledge, surfaced only in 2007. The fact could have been different had application been accompanied by affidavit seeking condonation of delay perhaps the parties to lis would have a opportunity to lead evidence in support of respective claims as whether application seeking condonation of delay was actuated from a mala fide or bona fide reasons. Even otherwise, the application dated 20.07.1987 for recalling of the decree is not maintainable. The remedy is to file independent suit and till date such remedy has not been availed. The contention that Will had attained finality owing to the withdrawal of RSA would be meaningless, much less, not tenable in view of decree dated 31.10.1984, which is still invogue. It appears that Kidar Singh had accepted the decree but thereafter woke up from slumber & for consideration moved the application for recalling which was dismissed in default.

Courts below have rightly decreed the suit in favour of Sahib Kaur (since deceased) on the premise that decree dated 31.10.1984 was in her favour and Kidar Singh in the meantime had also suffered a decree dated 21.02.1992 in favour of Vijender Singh to create hurdle in seeking

execution of decree dated 31.10.1984 in essence Kidar Singh had in my view adopted all possible way to create rumbles in path of Sahib Kaur. There may be myriad circumstances for Kidar Singh for setting aside the decree dated 31.10.1984 but owing to the facts that no steps have been taken for seeking restoration of the application dated 20.07.1987 for last 16 years. In my view, there is no illegality and perversity in the judgment and decree rendered by the Courts below in RSA and, therefore, much less, no substantial questions of law arises for adjudication of the present appeal.

Accordingly, same are upheld.

As regards the impugned order dated 27.10.2012, whereby application for restoration of the application filed for recalling of the decree, in my view, same was not accompanied by any application for seeking condonation of delay and story coined lacks bona fide much less do not have any substance, or, force as it has been allowed summarily without taking evidence in affirmative.

In view of what has been observed above, impugned order dated 27.10.2012 (In CR) is set aside.

Revision petition is allowed and RSA is accordingly, dismissed.

27.08.2015

pawan

(AMIT RAWAL)
JUDGE