

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

**CR No.1202 of 2010(O&M)
Date of Decision-15.09.2016**

Jagat Singh and others	... Petitioners
Versus	
Hari Chand and others	... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Bakshi, Advocate for the petitioners.

Ms. Deepa Jain, Advocate for respondents No.1 to 4.

Mr. Shashi Kumar Yadav, Advocate
for respondents No.5, 6 and 7(i) (ii) and (iii).

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed order dated 04.11.2009 passed by Civil Judge (Junior Division), Faridabad vide which ex parte order dated 21.04.2000 and judgment and decree dated 17.11.2000 passed by Civil Judge (Junior Division), Faridabad were set aside by allowing the application under Order 9 Rule 13 CPC.

[2]. Plaintiffs-petitioners filed a suit for declaration and permanent injunction in which defendants were proceeded against ex parte vide order dated 21.04.2000.

[3]. Plaintiffs-petitioners set up a case for grant of declaration and consequential relief of permanent injunction as they were owners in possession of suit land in the revenue estate of village Dungarpur, Tehsil and District Faridabad having

purchased the same vide sale deed dated 06.11.1987. Mutation was also sanctioned in their favour. Chet Ram (father of the petitioners) had leasehold rights for 99 years in respect of suit land. After purchased by the plaintiffs, he relinquished all his leasehold rights in favour of plaintiffs. Defendants had no right, title or interest in the property. Their names were wrongly appearing in the column of cultivation. Defendants never remained in possession of the property, nor ever cultivated the same. The revenue record was claimed to be wrong, null and void and not binding upon the possessory rights of the plaintiffs-petitioners.

[4]. After filing written statement, the defendants were proceeded against ex parte vide order dated 21.04.2000.

[5]. Trial Court received ex parte evidence of the plaintiffs and ultimately decreed the suit vide judgment and decree dated 17.11.2000.

[6]. Defendants-respondents filed an application for setting aside the ex parte order dated 21.04.2000 and ex parte judgment and decree dated 17.11.2000 by moving application dated 06.12.2005. It was alleged that defendants No.1 to 4 never appointed any Advocate on their behalf, nor signed any power of attorney or written statement as mentioned in the ex parte order and ex parte judgment and decree. The signatures, if any, were claimed to be forged and fabricated. It was asserted that

defendant No.4 was serving in Military on the alleged date and time of filing documents. Defendant No.6 never put in appearance before the Court, nor appointed any Advocate. The entire proceedings were claimed to be result of fraud. The plaintiffs never got the entry of alleged order and judgment and decree in the proceedings before the Assistant Collector, IInd Grade, Faridabad. The said proceedings were also claimed to be result of fraud. No mutation was sanctioned till filing of the application.

[7]. Even the defendants filed a suit for permanent injunction before the Court, where the plaintiffs put in appearance and filed written statement in the suit titled as Hari Chand Vs. Jagat Singh and others. The case was fixed for consideration on stay application on 09.11.2005 and on that day, defendants-respondents came to know about the decision dated 17.11.2000. Prior thereto, defendants No.1 to 4 were never in the knowledge of order dated 21.04.2000 and judgment and decree dated 17.11.2000. On the aforesaid premise, an application for setting aside the aforesaid order and judgment and decree was moved.

[8]. Application was contested by the petitioners. Civil Judge (Junior Division), Faridabad vide order dated 04.11.2009 allowed the application and set aside the ex parte order dated 21.04.2000 and ex parte judgment and decree dated 17.11.2000. The said order has been assailed in the present revision petition.

[9]. I have heard learned counsel for the parties.

[10]. Learned counsel for the petitioners submitted that the respondents were legally proceeded against ex parte. They had the knowledge of ex parte proceedings prior to 09.11.2005 as all the defendants are real brothers and are resident of the same address and village. Hari Chand son of Dalip Singh had appeared and his signatures were proved from the evidence on record. His counsel Mr. I.P. Alok also appeared. Signatures of Hari Chand were admitted by the expert, therefore, knowledge stood proved qua all the defendants who are real brothers. The other two connected cases were also filed for correction of khasra girdawari by the plaintiffs against the respondents. They deliberately did not appear and proceeded against ex parte.

[11]. Learned counsel for the petitioners also contended that no sufficient ground was existing for setting aside the ex parte proceedings/judgment and order. The application was filed after more than 5 years of passing of judgment and decree. A written statement was filed after appearing through Mr. I.P. Alok Advocate before the Civil Court which was duly signed by them. Learned counsel contested the impugned order truth and nail.

[12]. Apparently, summons were issued to all the defendants. Order dated 21.04.2000 did not show that all the defendants were proceeded against ex parte, rather the order pointed out that only one defendant was proceeded against ex parte without specifying as to who was that defendant. No specific

order was passed with regard to all the defendants whether proceeded ex parte or not. Learned counsel for the petitioners submitted that the same was an inadvertent error and the defendants cannot take advantage of it. Learned counsel further submitted that signature of Hari Chand Q1 was the same signature which was appended by him before the Court. In the report of FSL dated 11.08.2009, it was opined that the possibility that the person who wrote red and enclosed specimen signatures marked S2 (stated to be of Hari Chand) also wrote red and enclosed questioned signature similarly stamped and marked Q 1 (on Vakalatnama date 10.10.1997) cannot be ruled out. Therefore, it was argued that defendants had knowledge regarding pendency of suit against them and they are not entitled to any relief.

[13]. Perusal of the record showed that one of the defendant had engaged Mr. I.P. Alok as his counsel. Signatures of Hari Chand were admitted by the expert, but the remaining defendants never put their presence before the Court as none of the order passed by the Court showed them to be present. Mr. I.P. Alok, Advocate was engaged by Hari Chand only. On 21.04.2000, none of the defendants were appeared and were proceeded against ex parte. Remaining defendants did not put their presence and there was no order on the record that service was duly effected upon them. It was admitted by learned counsel for the plaintiffs that there was some inadvertent mistake on the part of the Court in not

proceeding ex parte against all the defendants. Taking note of aforesaid glaring facts, Civil Judge (Junior Division), Faridabad accepted the application and set aside the ex parte order dated 21.04.2000 and ex parte judgment and decree dated 17.11.2000.

[14]. Notice of motion was issued in the revision petition on 26.04.2010. Operation of the order dated 04.11.2009 passed by the trial Court was stayed. Revision petition was admitted to regular hearing on 03.02.2014. The stay order granted on 26.04.2000 was modified to the extent of staying the further proceedings before the trial Court.

[15]. In the light of apparent facts on record, it cannot be conclusively presumed that all the defendants were having knowledge of any pending case. The fault of the Court in not proceeding against all the defendants cannot be attributed to the defendants for presuming that alleged knowledge attributable to Hari Chand alone would suffice to infer knowledge qua all the defendants. It is a cardinal principle of law that nobody should be condemned unheard. The merits of the case cannot be sacrificed on the alter of technicalities. At best, the trial Court can proceed with the case after hearing all concern and decide the controversy on merits.

[16]. In the light of aforesaid, I am of the view that there is no jurisdictional error in the impugned order dated 04.11.2009

passed by Civil Judge (Junior Division), Faridabad. Consequently,
this revision petitioner is dismissed.

(RAJ MOHAN SINGH)
JUDGE

15.09.2016

Prince

Whether Reasoned/Speaking Yes/No

Whether Reportable Yes/No