

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.1991 of 2015

Date of Decision:7.4.2016

Sucha Singh and others

---Petitioners

vs.

Gurdeep Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.K.R.Dhawan, Advocate
for the petitioners

None for respondents No. 1 to 5

Mr. Raman Mohinder Sharma, Advocate
for respondent No. 6

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

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 3.3.2015 (Annexure P-5) passed by the Civil Judge (Junior Division), Zira vide which the court has framed an issue to decide the application under Order 9 Rule 13 of the Code of Civil Procedure (for short

“CPC”) filed by the petitioners.

Counsel for the petitioners would contend that respondents No. 1 to 5 filed civil suit No. 39-1 of 8.3.2007/2008 for declaration claiming ownership in equal share of land measuring 29 kanals 7 marlas, detailed in head note of the plaint that came to be decreed by the learned trial court vide judgment and decree dated 25.4.2011. In the said case, the petitioners in whose favour one of their co-defendants namely Mohinder Singh had executed a sale deed, were proceeded against ex parte. The petitioners filed an application for setting aside the aforesaid judgment and decree and the contesting respondents/plaintiffs represented by Sh. Ajit Aggarwal, Advocate, made a statement raising no objection if the ex parte decree is set aside and the case is decided afresh after hearing defendants No. 4 to 8. It is argued that despite there being no contest to the application for setting aside the ex parte judgment and decree, the learned trial court has framed an issue in the following terms:-

“Whether there are sufficient reasons which hold back the applicant from appearance before the Court? OPA”

It is vehemently argued that even if an application for setting aside the ex parte judgment and decree is filed beyond the period of limitation, the same can be condoned by the trial court by invoking the provisions of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”). In addition, it is submitted that as the contesting respondents did not object to setting aside the ex parte judgment and decree, there was no reason for the Court to frame the issue, calling upon the parties to adduce evidence for determination of the said issue. Another submission made by counsel is that

the petitioners came to know about the ex parte judgment and decree during pendency of another suit titled “Sucha Singh vs. Balkar Singh” in the year 2013 and they filed the application.

Respondents No. 1 to 5 were earlier being represented by Sh. Yogesh Puri, Advocate, but he was not present in the Court at the time of arguments. This apart, as respondent Nos. 1 to 5 made a statement raising no objection to set aside the ex parte judgment and decree, it can be inferred that they would not be interested to contest the proceedings.

Counsel for respondent No. 6 has submitted that Balkar Singh was impleaded as defendant No. 2 in the suit filed by Shmt. Gurdeep Kaur and others and was one of the co-defendants with the present petitioners. It is argued that statement made by counsel for the plaintiffs/respondents No. 1 to 5 before the trial court cannot be used to circumvent the provisions prescribing limitation. It is urged that as the application for setting aside the ex parte judgment and decree was filed more than four months after the alleged knowledge, no fault can be found in the impugned order calling upon the petitioners to adduce evidence to prove the issue framed by the Court.

I have heard counsel for the parties, perused the records particularly the statement dated 23.7.2014 and the impugned order.

Concededly, the contesting respondents/plaintiffs raised no objection if the application for setting aside the ex parte judgment and decree is allowed and the suit is decided afresh after providing an opportunity to the applicants to contest the proceedings. As the plaintiffs raised no objection to set aside the ex parte proceedings, I find merit in

contentions of the petitioners that there was no occasion for the trial court to frame an issue for determination, in the circumstances of the present case,

Order 14 CPC provides for settlement of issues and determination of suit on issues of law or on issues agreed upon. Rule 1 of Order 14 deals with framing of issues. A relevant extract from Rule 1 of Order 14 reads as follows:-

- “Framing of issues.-** (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.
- (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.
- (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.
- (4) xxx xxx xxx
- (5) xxx xxx xxx.”

A casual reading of sub rule 1 of rule 1 aforesaid makes it evident that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. In the case at hand, as the contesting respondents did not opt to contest the application and thus did not file any reply to deny material proposition of fact or law asserted by the petitioners/applicants and rather admitted their claim by making a statement on their behalf by Sh. Ajit Aggarwal, Advocate, the learned trial court by disregarding the provisions of Order 14 misdirected itself to frame an issue for determination. In this view of the matter, the impugned order cannot be

allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed, the application filed by the petitioners for setting aside ex parte judgment and decree dated 25.4.2011 is allowed and the suit titled “Smt. Gurdeep Kaur vs. Mohinder Singh and others” is restored at the Board of the learned trial court for disposal in accordance with law.

(Rekha Mittal)
Judge

7.4.2016
paramjit