

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2119 of 2014

Date of Decision: February 01, 2016

Harjaswant Singh alias Jaswant Singh

...Petitioner

Versus

Niranjan Singh & others

...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.R.S.Budhwar, Advocate,
for the petitioner.

Mr.Aayush Gupta, Advocate,
for L.Rs of respondent No.2 Sahib Singh, i.e.,
respondent Nos.2(i), 2(ii) and 2(iv) & 1,3,4 and 5.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the order dated 27.4.2011, whereby the application filed under Order 9 Rule 13 CPC seeking setting-aside of the *ex-parte* order dated 22.3.1999 and *ex-parte* judgment and decree dated 22.3.2001, has been dismissed and order dated 3.12.2013, whereby the appeal filed against the dismissal of the application, has been dismissed.

Mr.R.S.Budhwar, learned counsel appearing on behalf of the petitioner submits that Bakhtawar Singh was owner of the land and he, vide judgment and decree dated 28.8.1971, executed a decree in favour of the petitioner. In 1998, the aforementioned judgment and decree was challenged by Bakhtawar Singh and in those proceedings, the petitioner, who was

arrayed as a defendant, was proceeded *ex-parte* on 22.3.1999 and thereafter *ex-parte* judgment and decree dated 22.3.2001 was passed.

An application under Order 9 Rule 13 CPC in the suit was filed on 31.5.2001 taking numerous grounds, which are numerated herein below:-

- a) The summons sent for service of the petitioner for 6.3.1999 showed that the petitioner had hidden from the notice of the Process Server Parshotam Dass. The trial Court adjourned the matter for 22.3.1999 and summons in this regard were issued by the process serving agency to Process Server Tarsem Lal. As per his report dated 6.3.1999 (Ex.AW2/B) on the summons, the petitioner has refused to take the summons;
- b) The provisions of the Civil Procedure Code have not been complied with, much less summons have not been affixed in case there was actual refusal. Even the address given in the plaint was of Kurukshetra, whereas summons had been sent at Ambala and actually the petitioner is resident of Ambala;
- c) As per the judgment and decree dated 28.8.1971, the father of the petitioner had executed a relinquishment deed in favour of his son and suit in this regard is pending adjudication. In case the findings on the application under Order 9 Rule 13 CPC are not set-aside, it would have far-reaching effect in the pending suit and, thus, prays for setting of the order under challenge.

Mr.Aayush Gupta, learned counsel appearing on behalf of respondent No.1, 3 to 5 and L.Rs of respondent No.2 submits that the pendency of the aforementioned suit was in the knowledge of the petitioner

as the summons were sent at the correct address where the petitioner was residing. The petitioner has not examined or summoned Process Server, Tarsem Lal, who is alleged to have reported “refusal” on the summons. On examination of the said Process Server, it would have been ascertained whether the provisions of the Civil Procedure Code were complied with or not. In respect of pendency of other suit, it would be meaningless as to whether the father of the petitioner had acquired the property or not and, thus, prays for dismissal of the revision petition.

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

The aforementioned facts would reveal that the petitioner had acquired the knowledge of the *ex-parte* judgment and decree in the month of May, 2001 and filed the suit thereafter. The address on which the summons had been sent is of Ambala and petitioner is also resident of Ambala. In the cross-examination of the previous Process Server, namely, Parshotam Dass, nothing surfaced to cause dent vis-a-vis the report of avoiding service. In case the petitioner had any grievance vis-a-vis the report of refusal, he should have summoned the Process Server, namely, Tarsem Lal, who has caused the report of “refusal”, but knowing fully well that in case the aforementioned witness is examined in support of the contention made in the application, he would negate his plea, the petitioner did not summon him. Having failed to do so, I am of the view that the petitioner had the knowledge of the *ex-parte* judgment and decree.

I do not intend to differ with the findings rendered by the trial Court and as well as the Appellate Court. The impugned orders are hereby affirmed.

It is made clear that nothing mentioned in this order, much less in the orders under challenge shall affect the pending right of the suit claiming right in the property allegedly owned by Bakhtawar Singh.

With the aforementioned observations, the revision petition is disposed of.

February 01, 2016
ramesh

(AMIT RAWAL)
JUDGE