

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.2276 of 2014(O&M)
Date of Decision.25.01.2016

Naresh Chand Singla LR of Smt. Ashrafi Devi

.....Petitioner

Vs.

Smt. Poorni Devi

.....Respondent

Present: Mr. Mukand Gupta, Advocate
for the petitioner.

Mr. D.C. Mittal, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

C.M. No.1352-CII of 2016

For the reasons stated in the application, order passed by this Court on 12.01.2016 is recalled and the revision petition is restored to its original number.

Application is allowed.

C.R. No.2276 of 2014

1. The suit for recovery of possession through the mandatory injunction and for mesne profits was set for hearing when the defendant remained ex parte. The petitioner claimed himself to be a legal representative of the deceased-plaintiff by virtue of a Will said to have been executed by the plaintiff. The Court dismissed the suit finding that the plaintiff had not proved the Will and therefore, even the ex

parte decree cannot be passed for the failure of the plaintiff to prove his case. The plaintiff filed an application for review of the judgment that there was not even an issue framed with reference to the Will and therefore, he was not aware of the fact that he had to bring evidence to prove the Will. When the Court was setting up the principle that even an ex parte decree cannot be passed unless it was convinced with the details that were required to be proved, it was fair enough that the plaintiff expected that there were issues framed about the requirement of having to prove the Will. The suit has been disposed of at the ex parte stage without framing any issue on merit. Instead of filing an appeal, he has filed the application for review of the judgment to point out that the Court could not have disposed of the case without framing issues as provided under the Civil Procedure Code. The said application has also been dismissed and hence, the revision petition.

2. I have no difficulty in understanding that even for ex parte decree, the Court can look for appropriate proof of what is required to be done to secure a valid decree. If such an exercise is undertaken by a Court to examine the merits of the case, it should be appropriate that it frames all necessary issues so that the plaintiff who gives ex parte evidence knows what he has to prove. If the Court has not framed appropriate issues and has dismissed the issue, however, on the ground that the plaintiff has not adduced proof of validity of the Will then he was entitled to complain that the judgment suffers from a fundamental vice for not following the procedure laid down by law. It was a case for recalling the decree passed and allowing for appropriate issues to be framed and then proceeded with the case in accordance with law.

3. The counsel appearing on behalf of the respondent who remained ex parte before the Court below has an objection that the plaintiff had actually appeared in Court and examined himself and when a decree was passed, the only remedy for him was to prefer an appeal and not filing an application for review. The counsel for the respondent states that review itself is not maintainable and an application for review of the judgment which was dismissed leaves nothing to be challenged in revision and the remedy of the party will be only to prefer appeal against the original decree which was passed and it cannot be interfered with through the application for review. The counsel refers me to the judgment of the Supreme Court in *DSR Steel (Private) Limited Vs. State of Rajasthan and others (2012) 6 SCC 782* where the Court has held in para 25.3 as under:-

“The third situation with which we are concerned in the instant case is where the revision petition is filed before the Tribunal but the Tribunal refuses to interfere with the decree or order earlier made. It simply dismisses the review petition. The decree in such a case suffers neither any reversal nor an alteration or modification. It is an order by which the review petition is dismissed thereby affirming the decree or order. In such a contingency there is no question of any merger and any one aggrieved by the decree or order of the Tribunal or court shall have to challenge within the time stipulated by law, the original decree and not the order dismissing the review petition. Time taken by a party in diligently pursuing the remedy by way of review may

delay in the filing the appeal, but such exclusion or condonation would not imply that there is a merger of the original decree and the order dismissing the review petition.”

4. The order already passed cannot be interfered in revision and it will be open for the petitioner to file an appeal against the decree originally granted and if there is a delay in filing the appeal, he may refer the disposal of the case before this Court and seek for exclusion of the time. If such an application is filed, the Appellate Court will examine the same and pass appropriate orders.

5. The revision petition is dismissed but with the liberty to pursue the appeal before a competent court in the manner referred to in the judgment of the Supreme Court as extracted above.

(K. KANNAN)
JUDGE

January 25, 2016
Pankaj*