

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

**Civil Revision No.4669 of 2016 (O&M)
Date of Decision: 27.08.2016**

Sukhwinder Singh and others

.....Petitioners

Vs

Jora Singh and others

....Respondents

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

Present: Mr. N.S. Dadwal, Advocate
for the petitioners.

Mr. Mohit Jaggi, Advocate
for respondent Nos.1 and 2.

RAJ MOHAN SINGH, J

[1]. Petitioners have assailed order dated 30.04.2016 passed by Civil Judge (Jr. Divn.) Jagraon, whereby application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 07.06.2012 moved by the respondents was allowed.

[2]. Petitioners alleged that Mukhtiar Singh grandfather of the petitioners sold 19 *Kanals* 5 *Marlas* of land to Baldev Singh (since deceased) vide sale deed dated 10.01.1996 and he also

sold 20 *Kanals* of land out of 38 *Kanals* 10 *Marlas* of land to Baldev Singh vide sale deed dated 27.04.1994. Mukhtiar Singh also sold 24 *Kanals* of land to the petitioners vide sale deed dated 15.09.2000. He also sold 24 *Kanals* of land out of 90 *Kanals* 17 *Marlas* to the petitioners on 14.09.2000. It was further alleged that vide these sale deeds, half of the tubewell and electric connection were sold to the petitioners. Since there is a tubewell in *Khasra* No.28, Rect. No.13 of *Khewat/Khatauni* No.164/204 and there is a water course in *Khasra* No.25/2, Rect. No.13 of *Khewat/Khatauni* No.164/204, *Khasra* No.28 of Rect. No.13 is located in between *Khasra* Nos.25, 24 and 28, where tubewell is installed was sold by Mukhtiar Singh to Baldev Singh.

[3]. The controversy started from *Khasra* No.28. There was a water course in *Khasra* No.25/2 from which the petitioners used to take water to their fields. Since only half share of tubewell was sold by Mukhtiar Singh to Baldev Singh, whereas half share remained with the petitioners on account of sale in their favour and, therefore, petitioners were owners to the extent of half share of the tubewell. Petitioners filed suit for declaration to the effect that they were the joint owners of electric connection and were owners to the extent of half share in tubewell installed in *Khasra* No.28. They also sought injunction

seeking restraint against the defendants from using the tubewell and also from demolishing the water course in *Khasra* No.25/2.

[4]. During pendency of the aforementioned suit, Baldev Singh died and his legal representatives were brought on record. However due to their non-appearance, they were proceeded against *ex parte* on 14.01.2011. Thereafter suit of the plaintiff/petitioners was decreed *ex parte* with costs vide judgment and decree dated 07.06.2012.

[5]. On 28.07.2012, respondent Nos.1 and 2 filed an application under Order 9 Rule 13 CPC for setting aside the judgment and decree dated 07.06.2012 on the ground that Baldev Singh had transferred the aforesaid land measuring 39 *Kanals* 5 *Marlas* in favour of his wife Karnail Kaur @ Manjinder Kaur, who sold land measuring 74 *Kanals* 17 *Marlas* including the land measuring 39 *Kanals* 5 *Marlas* to the respondent Nos.1 and 2 vide registered sale deed dated 24.06.2010 for valuable consideration and also delivered possession of the land on the spot.

[6]. When the petitioners started claiming their right of ownership over electric motor in *Khasra* No.28 and in respect of their right in water course in *Khasra* No.25/2 and threatened to dig a *khaal* from the side of motor and apprised the respondent

Nos.1 and 2 about the judgment and decree dated 07.06.2012, the respondent Nos. 1 and 2 came to know about the facts and they moved the application dated 28.07.2012 for setting aside the *ex parte* judgment and decree.

[7]. The application was contested by the petitioners. Vide order dated 30.04.2016, Civil Judge (Jr. Divn.) Jagraon set aside the *ex parte* judgment and decree dated 07.06.2012. That is how the present revision petition came to be filed before this Court.

[8]. I have heard learned counsel for the parties to some extent.

[9]. Apparently, initially the petitioners filed civil suit against Baldev Singh. In the said suit, the petitioners prayed for declaration being joint owners of electric connection. In the said suit, Baldev Singh appeared in the Court and contested the suit. During the pendency of the suit, Baldev Singh died and his legal representatives were brought on record and they were proceeded against *ex parte*. The Civil Court decreed the suit *ex parte* on 07.06.2012. Respondent Nos.1 and 2 claimed that they had purchased land from Karnail Kaur @ Manjinder Kaur wife of Baldev Singh vide registered sale deed dated 24.06.2010 along with electric connection. Baldev Singh had already transferred

the land to his wife and mutation was also sanctioned in her favour. Land measuring 74 *Kanals* 17 *Marlas* including the land measuring 39 *Kanals* 5 *Marlas* came to her from her husband.

[10]. Respondent Nos.1 and 2 were not aware about the pendency of the suit. It has come from the testimony of Jora Singh that Karnail Kaur @ Manjinder Kaur did not disclose him about the dispute regarding electric motor connection. The cross-examination of Jora Singh clearly demonstrated that Karnail Kaur @ Manjinder Kaur did not inform him about the dispute regarding motor connection installed in the suit land. Baldev Singh had transferred the land to his wife during pendency of the suit. Karnail Kaur @ Manjinder Kaur sold the land along with disputed motor connection to respondent Nos.1 and 2. Even the vendee *lis pendens* have right of hearing and substitution. Respondent Nos.1 and 2 were not party to the main suit, but they have purchased the land from Karnail Kaur @ Manjinder Kaur on transfer to her from her husband Baldev Singh. Respondent Nos.1 and 2 stepped into the shoes of Karnail Kaur @ Manjinder Kaur and ultimately Baldev Singh, therefore, reasonable opportunity was required to be given to them to prove their case.

[11]. Civil Judge (Jr. Divn.) Jagraon has taken note of all the

events to conclude that an opportunity should be given to respondent Nos.1 and 2 to establish their right viz-a-viz. the disputed electric motor connection. Apparently, Baldev Singh died in the year 2008 and his legal representatives were impleaded in 2011 and they were proceeded against *ex parte*. *Ex parte* judgment and decree came to be passed on 07.06.2012. Respondent Nos.1 and 2 purchased the land on 24.06.2010 during pendency of the suit, but before passing of *ex parte* judgment and decree dated 07.06.2012.

[12]. Baldev Singh became owner by virtue of sale deeds executed by Muktiar Singh and the plaintiffs also became owners by virtue of sale date from Muktiar Singh on 14.05.2000. Baldev Singh during the pendency of the suit transferred his land to his wife, who became the owner. At that time when the legal representatives of Baldev Singh were proceeded against *ex parte*, they were not owners of the land having been sold to respondent Nos.1 and 2 on 24.06.2010.

[13]. In all fairness, an opportunity has to be granted to respondent Nos.1 and 2 to have fair trial as nobody should be condemned unheard. In my considered view, the indulgence shown by the Civil Judge (Jr. Divn.) Jagraon in setting aside the *ex parte* judgment and decree dated 07.06.2012 cannot be

faulted with, nor the same is found to be suffering from any jurisdictional error.

[14]. In view of aforesaid, this revision petition is found to be meritless and the same is accordingly dismissed.

August 27, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No