

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.661 of 2012 (O&M)

Date of Decision: April 01, 2016

Mohinder Kaur & others

...Petitioners

Versus

Mohinder Sain Bedi (deceased) through L.Rs & 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.Puneet Jindal, Senior Advocate with
Ms.Sakshi, Advocate,
for the petitioners.

Mr.Amarjit Markan, Advocate,
for respondent No.1.

AMIT RAWAL, J. (Oral)

CM No.2663-CII of 2012

Prayer in the application is for filing the present revision
petition on behalf of L.Rs of petitioner No.3.

Allowed subject to just exceptions.

Civil Revision No.661 of 2012

Petitioner-defendant Nos.4 to 7 are aggrieved of the dismissal
of the application filed under Order 9 Rule 13 CPC and as well as the appeal
filed against the order dismissing the application.

Mr.Puneet Jindal, learned Senior Counsel assisted by
Ms.Sakshi, Advocate, appearing on behalf of the petitioners submits that
the respondent-plaintiffs had instituted a suit bearing No.38 dated 4.2.1987

for joint possession of land measuring 15 kanals 9 marlas to the extent of 2/3rd share. The notice of the suit was sent to all the defendants for 18.3.1987. As per the summoning report, the summons had not been received back and fresh summons were ordered to be issued on old process fee for 8.5.1987. On 8.5.1987, defendant No.3 was served, but was not present and she was proceeded ex-parte. Remaining defendants were not served and they were again ordered to be summoned for 10.6.1987 on filing of the process fee within three days. On 10.6.1987, one Advocate had appeared on behalf of defendant No.2 and the other defendants were not present and the report was that the process received back unexecuted and they were ordered to be summoned through fresh summons for 12.8.1987. Even on that date also, no report regarding summoning came on the Court. Without recording the satisfaction, as per the provisions of Order 5 Rule 20 CPC, all the remaining un-served defendants were ordered to be served through publication and on 22.9.1987 proceeded ex-parte. Ultimately, the aforementioned suit was decided ex-parte vide judgment and decree dated 16.9.1992. Against the aforementioned judgment and decree, defendant No.1, who had parted with the ownership of defendant Nos.2 and 3 from whom defendant Nos.4 to 7 had purchased the land measuring 10 kanals 10 marlas through sale deed dated 9.9.1980, had filed an appeal. On receipt of the notice of the appeal, acquired the knowledge of the ex-parte judgment and decree and filed the application under Order 9 Rule 13 CPC. On the next date, i.e., 17.9.1992, during the course of the application, Sarpanch AW-3 was examined, who unequivocally stated that the Newspaper 'Nawan Zamana', through which they were ordered to be summoned, was not in circulation in the Village. The trial Court erroneously dismissed the

application by relying upon the report of the Process Server dated 6.6.1987. The report dated 6.6.1987 meant for the next date, i.e., 10.6.1987 that one Sardara Singh had received the summons on behalf of the appellants, whereas Mohinder Kaur defendant No.4 appeared and stated that Sardara Singh had died. He further submits that the said report was not as per the zimni order dated 10.6.1987 and was not accepted by the trial Court and the defendants have been proceeded *ex-parte* on the basis of the fact that they did not appear despite having been served through publication. All these facts have not been noticed, which have resulted into gross illegality and perversity, much less valuable right to put across the defence. The filing of the appeal by defendant No.1 would not entail into emerging of the ex-parte judgment and decree and, thus, urges this Court to grant liberty to the defendants to defend the suit within the time line/frame as this Court may deem it appropriate.

Mr.Amarjit Markan, learned counsel appearing on behalf of respondent No.1 submits that as per the explanation to Rule 13 of Order 9, since the petitioners were arrayed as respondents in the appeal, they could have moved an application for transposing them as appellants and challenged the judgment and decree as the remedy available to the effected party is either to move an application under Order 9 Rule 13 CPC or file an appeal, whereby they have lost the right to seek transposing. The application under Order 9 Rule 13 CPC was not maintainable. In support of his contention, he has relied upon the judgment rendered by the Hon'ble Supreme Court in **P.Kiran Kumar Versus A.S.Khadar**, 2002(2) R.C.R. (Civil) 809 and, thus, urges this Court that the sale deed challenged by defendant No.1 was at the back of the plaintiffs as it was more than their

share. Allowing of the application would tantamount to putting clock back as more than 26 years have elapsed and, thus, requests this Court for dismissal of the petition with exemplary costs.

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

For the sake of adjudication of the lis between the parties, it would be apt to reproduce the zimni orders extracted at page 9 of the paper book. The same read thus:-

“Mohinder Singh Vs. Banwari Lal etc.

C.S.No.38/87

D.O.Instt.: 3.2.87

Case received today. Reader to check and report.

S.J.I.C.

4/2/87

Sir,

The suit is property stamped.

Reader

4/2/87

Present:- Counsel for the plaintiff.

Report perused. Suit be registered. Summons to the defendant be issued for 18/3/87 on filing of P.F. & R.C. P.F. & R.C. Be filed within three days.

S.J.I.C.

4/2/87

Present: Counsel fro the plaintiff.

Defendants are not present. Summons not received back. Fresh summons to the defendants be issued for 8/5/87 on old P.F.

S.J.I.C.

18/3/87

Present: Counsel for the plaintiff.

Defendant No.3 Balbiro served for today but is not

present. He is proceeded ex-parte. Remaining defendants not served. They be again summoned for 10.6.87 on PF. PF be filed within three days.

S.J.I.C.

8/5/87

Present: Counsel for the plaintiff.

Sh.Harpreet Singh Adv. For Defendant No.2.

Other defendants are not present. Process received back un-executed. Fresh summons to the remaining defendants be issued for 12/8/87 on old P.F.

S.J.I.C.

10/6/87

Present: Counsel for the parties as before.

Process against defendant No.1 received back un-executed. Process against the remaining defendants not received back with any report. It appears that the defendants cannot be served in the ordinary manner. They are accordingly ordered to be summoned through publication of notice in daily Nawan Zamana, Jalandhar for 22.9.1987. P.F. And publication charges be filed within a week.

S.J.I.C.

12/8/87

Present:- Counsel for plaintiff.

Sh.Devinder Moudgil, Counsel for defendant No.1.

Sh.Harpreet Singh, Counsel for defendant No.2.

None has appeared for the remaining defendants in spite of publication of notice for today in daily Nawan Zamana Jalandhar. They are proceeded against ex-parte. For written statement to come up on 20.10.1987.

S.J.I.C.

22/9/87”

On perusal of the zimni orders, particularly order dated 10.6.1987, it is evident that the trial Court has not accepted the report of the

Process Server dated 6.6.1987 as the summons were meant for appearance

on the adjourned date, i.e., 10.6.1987 and the defendants have been proceeded ex-parte on the basis of publication having not appeared in pursuance to the publication. In my view, the report of the Process Server could not have been looked into by the trial Court, much less the Appellate Court for the purpose of adjudication of the application under Order 9 Rule 13 CPC. In my view, both the Courts below have failed to advert to the statement of the Sarpanch AW-3, who candidly submitted that there was no circulation of the Newspaper with the name and style of 'Nawan Zamana'. The said evidence was sufficient and enough for the Court to form an opinion for setting aside the ex-parte judgment and decree, realising the fact that the petitioners have been prevented from putting their cause/defence. I am not in agreement with the submission/plea of Mr.Markan inasmuch as that the ratio decidendi culled out in **P.Kiran Kumar's case (supra)** is in respect of a matter where the party had filed an appeal and after dismissal of the appeal chose to file a revision. No doubt, explanation to Rule 13 Order 9 CPC provides that the party cannot avail two remedies. The present case is not a case of kind, where the petitioners have availed the remedy of appeal.

Keeping in view the facts and circumstances of the present case, I am of the view that the impugned orders are not sustainable in the eyes of law. The ex-parte judgment and decree qua petitioner-defendant Nos.4 to 7 are set-aside subject to payment of costs of ₹20,000/-, to be paid to the counsel for the respondent-plaintiff in the High Court. However, since more than 26 years have elapsed, I deem it appropriate to issue the following directions to the trial Court:-

- a) On appearance of the petitioners, they shall file written

statement within a period of 30 days from their appearance and thereafter replication within 15 days and on framing of the issues, the trial Court would afford 4-4 effective opportunities to each of the parties to lead their evidence by taking the aid of provisions of Order 16 Rule 1-A CPC and as well as the process of the Court and thereafter the trial Court shall make an endeavour to decide the suit as expeditiously as possible within a period of eight months.

It is made clear that the cost shall be condition precedent.

Revision petition stands allowed.

Parties, through their counsel, are directed to appear before the trial Court on 22.4.2016.

April 01, 2016
ramesh

(AMIT RAWAL)
JUDGE