

Civil Revision No. 7495 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 7495 of 2016(O&M)

Date of Decision:10.11.2016

Rachpal Kaur @ Raj Vijay Sharma

---Petitioner

vs.

Dalwinder Singh (Since deceased) through His Lrs and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Rakesh Gupta, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 5.7.2016 (Annexure P-1) passed by the Civil Judge (Junior Division), Phillaur whereby application filed by Dalwinder Singh since deceased, respondent No. 1 now represented by his legal representatives under Order 9 Rule 13 of the Code of Civil Procedure (in short "CPC"), has been allowed.

The petitioner alongwith Johal Jai Kaur and Sukhdev Kaur legal heirs of Darshan Singh @Sarwan Singh son of Ran Singh @ Ram Singh filed a suit for declaration that they are owners in possession of the suit land and challenged certain mutations, sale deed, detailed in head note of the plaint with consequential relief of mandatory injunction against defendant No. 3. In the alternative, they claimed relief of joint possession. In the suit, Dalwinder Singh (defendant No. 3/respondent No. 1) was proceeded against ex parte and eventually the proceedings culminated in the judgment and decree dated 15.6.2010 passed by the Civil Judge (Senior Division), Phillaur. Dalwinder Singh filed the instant application for setting aside the ex parte judgment and decree on the premise that he was never served in the suit nor came to know about pendency of the proceedings till February 2011. It was further pleaded that instructions were imparted to counsel for filing an application setting aside ex parte judgment and decree but counsel filed an appeal in the Court of District Judge, Jalandhar which was later withdrawn and the present application was filed without any delay since withdrawal of the appeal.

The learned trial court, on the basis of pleadings of the parties

framed issues, permitted the parties to adduce evidence in support of their respective contentions and eventually accepted plea of the respondent/applicant that there was no due service and the application is within limitation as delay has been sufficiently explained by the applicant.

The sole submission made by counsel for the petitioner is that the learned trial court has not at all adverted to series of documents proved on record, sufficient to establish that the respondent was very much aware of pendency of the suit from inception of the proceedings but he intentionally remained sitting on the fence and filed the present application in order to delay rights of the petitioner to fructify as the respondent is in possession of the suit land. In order to substantiate his contention, counsel has pointed out that Dalwinder Singh on 16.7.2003 executed a power of attorney Ex. PW2/B (Annexure P4) in favour of his father Lehember Singh bestowing power to prosecute any civil or criminal proceedings on his behalf. It is argued that Lehember Singh in his cross examination has admitted that in the year 2003, no other litigation was pending in the Court, thus, requiring execution of such power of attorney by Dalwinder Singh. He has further submitted that during pendency of the suit, Dalwinder Singh

purportedly alienated the suit land in favour of Mrs. Rajwinder Kaur, his mother in law and Rajwinder Kaur filed civil suit titled “Rajwinder Kaur vs. Johal Jai Kaur and others” (Annexure P-6). Dalwinder Singh himself instituted a suit for permanent injunction (Annexure P-7). In the grounds of appeal filed by Dalwinder Singh through his attorney Lehember Singh, in para 6, it has been averred that during pendency of the suit it came to knowledge of the present appellant/defendant No. 3 that he (Sadhu Singh defendant No. 2) had died and no body could pursue the said litigation on behalf of the defendants. It is argued that this averment clearly proves that Dalwinder Singh had knowledge of pendency of the suit, therefore, application for setting aside the ex parte proceedings filed beyond a period of 30 days from the date of ex parte judgment and decree is clearly barred by limitation.

I have heard counsel for the petitioner, perused the paper book, various annexures and copy of grounds of appeal.

Before addressing the issue if the respondent/applicant had knowledge of pendency of the proceedings, it remained an undisputed fact that the respondent was not properly served in the case. The petitioner has

not disputed that Dalwinder Singh was not residing in Patti Bari village Jandiala Tehsil Phillaur as he was actually residing in England. It is also an undisputed position of the case that service of the respondent was effected through publication in newspaper that is not proved to have circulation in the country where the respondent/applicant was residing. Under these circumstances, findings of the trial court that the respondent/applicant was not duly served are liable to be affirmed.

Much stress has been laid by counsel that the respondent/applicant had knowledge of the proceedings and he remained watching the proceedings. It is difficult to accept to reason that if a litigant has knowledge of pendency of the suit, he would allow a judgment and decree to be passed at the cost of getting it set aside without any assurance that his plea in this regard would be accepted. It further appears that if the respondent/applicant had knowledge of the proceedings and an intention to delay conclusion thereof, he would have certainly appeared in the case at the fag end of the trial. Keeping in view the natural human conduct, plea of the petitioner with regard to knowledge of the respondent becomes doubtful.

This brings the court to the documents pressed into service to

prove knowledge of the respondent/applicant. The power of attorney is dated 16.7.2003 and the suit was admittedly instituted on 29.5.2003. The attorney is a general power of attorney whereby Dalwinder Singh has bestowed almost all his powers to deal with his property in favour of Lehember Singh, his father. Lehember Singh was authorised to sell, mortgage, exchange, lease etc. the property of the executant. The mere fact that the power of attorney also authorises the attorney holder to pursue any civil or criminal litigation, in the circumstances, is not sufficient to prove that this power of attorney was executed by Dalwinder Singh after gaining knowledge of pendency of the suit. Taken from another angle, if Dalwinder Singh had decided to execute the power of attorney in favour of his father with an intent to authorize him to appear in the civil suit, there was no reason for him to stay away from the proceedings and let an ex parte judgment and decree to be passed after a period of seven years.

The sale of land by Dalwinder Singh in favour of his mother in law or institution of a suit by Rajwinder Kaur after decision in the present litigation and knowledge of the ex parte judgment and decree by the respondent in February 2011 and filing of a suit for injunction by Dalwinder

Singh in July 2011 would be of no consequence to draw an inference that Dalwinder Singh was aware of pendency of the suit.

Counsel has made a vain attempt to refer to para 6 of the grounds of appeal in support of his contention. Firstly, the document has not been placed on record by way of an affidavit. Secondly, the document appears to be photocopy of an attested copy issued by the copying agency of Jalandhar. Above all, it appears that the person who has drafted the grounds of appeal is not very good in drafting or language. It further appears that from the allegations raised in para 6, the appellant wanted to convey that as Sadhu Singh defendant No. 2 attorney holder of defendant No. 1 died during pendency of the suit, nobody could pursue the said litigation on behalf of the defendants.

Taking a cumulative view of the discussion made hereinbefore, it is difficult to accept contention of the petitioner that knowledge of the respondent qua pendency of the suit can be inferred much less established on the basis of documents relied upon.

No other point has been raised.

In view of the above, I do not find any reason to interfere in

the discretion exercised by the trial court.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

10.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No