

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

Decided on: 19.12.2016

1. CR No.7845 of 2016

Krishan Chander SareenPetitioner

Versus

Saroj Sareen and othersRespondents

2. CR No.7855 of 2016

Krishan Chander SareenPetitioner

Versus

Saroj Sareen and othersRespondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. K.K. Madan, Advocate
for the petitioner (in both the petitions)

REKHA MITTAL, J.

This order will dispose of CR No.7845 and 7855 of 2016 as common questions of law and fact are involved for adjudication. For the sake of convenience, facts are taken from CR No.7845 of 2016.

The sole submission made by counsel for the petitioner is that as the application for final decree came to be dismissed by the trial Court under Order 9 Rule 2 of the Code of Civil Procedure (in short 'CPC') for want of deposit of publication charges by the respondent/applicant, application filed under Section 151 CPC for issuing notice to all the respondents is not maintainable in view of specific remedy provided under Order 9 Rule 4 CPC. It is further submitted that in the application filed by the respondent/applicant, no

explanation much less tangible one has been offered with regard to failure of the respondent to deposit the publication fee at an appropriate stage of the proceedings, therefore, the impugned order cannot be allowed to sustain.

I have heard counsel for the petitioner, perused the paperbook particularly the various annexures including the order impugned.

Saroj Sareen filed a suit for separate possession by way of partition to the extent of 1/5th share in property bearing No.ES-245, Nakodar Road, Jalandhar, detailed in headnote of the plaint with relief of permanent injunction declaration and rendition of accounts. The suit was decreed by the trial Court vide judgment and decree dated 18.05.2010 and the preliminary decree passed by the trial Court appears to have attained finality. On the basis of preliminary decree, the respondent/plaintiff filed an application for passing final decree by way of partition of the suit property by metes and bounds. In those proceedings, the remaining respondents were ordered to be served through publication in a newspaper but as the respondent/applicant failed to deposit requisite publication charges, the application against respondents No.4 to 7 was ordered to be dismissed under Order 9 Rule 2 CPC vide order dated 30.08.2013. Later, an application was filed by Atal Sareen, legal representative of Sh. Krishan Chander Sareen (since deceased) for dismissal of the application for passing of final decree with the averments that the application for final decree cannot proceed further as application for final decree against respondents No.4 to 7 has been dismissed by the Court. The respondent/applicant submitted reply

to the application and simultaneously filed an application under Section 151 CPC for issuing notice to all the respondents. After seeking reply to the application, the Court below allowed the application with the following observations:-

“.....As per the judgment and decree dated 18.05.2010, the preliminary decree has already been drawn in favour of parties and the applicant/petitioner has been able to get her share to the extent of 1/5th share and the said decree is a preliminary decree. The present process is a continuation of preliminary decree, in which the rights of parties are to be determined. It is well settled that procedural law is a hand maid of justice. Accordingly no prejudice is going to be caused to the respondents if the application under Section 151 of CPC for summoning respondents, filed by the applicant is allowed by this Court.”

No doubt, the trial Court dismissed the application for final decree against respondents No.4 to 7 therein by referring to the provisions of Order 9 Rule 2 CPC but technically the said provision is applicable to a suit. If a suit is dismissed under Order 9 Rule 2 CPC, the plaintiff can seek its restoration by invoking the provisions of Order 9 Rule 4 CPC or file a fresh suit within the stipulated period of limitation. The application for passing a final decree was ordered to be dismissed against respondents No.4 to 7 for want of deposit of publication charges. As per settled position in law, technicalities cannot be allowed to stand in the way of substantial justice. Even if plea of the petitioner is accepted that the respondent/plaintiff was required to file an application under Order 9 Rule 4 CPC, no useful purpose would be served by setting-aside the impugned order and thereafter directing the

respondent/applicant to file an appropriate application before the Court particularly in the circumstances that the proceedings that culminated in passing of a preliminary decree for partition have already attained finality between the parties. This apart, quoting a wrong provision in law will not prejudicially affect the right of a party to seek redressal of his grievance unless the contesting party is able to show that a prejudice has been caused to him because of quoting of a wrong provision. In this view of the matter, I do not find any reason to interfere in the discretion exercised by the Court ordering service of all the respondents who needs to be heard in the matter before disposing of the application for passing of the final decree in pursuance of the preliminary decree passed in the suit filed by the respondent/plaintiff.

For the foregoing reasons, the petitions fail and are accordingly dismissed *in limine*.

19.12.2016
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(REKHA MITTAL)
JUDGE

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