

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

-.-

CR 8436 of 2015 (O&M)
Date of decision: 19.12.2016

Charles Weir

..... Petitioner

Versus

Santosh Kumari and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Sarbjit Singh Khaira, Advocate
for the petitioner

-.-

Rekha Mittal, J.

The present petition directs challenge against orders dated 09.12.2013 (Annexure P1) passed by the Civil Judge (Junior Division), Ajnala and dated 17.09.2015 (Annexure P2) passed by the Additional District Judge, Amritsar whereby application filed under Order IX Rule 13 of the Code of Civil Procedure (for short, CPC) for setting aside ex parte judgment and decree dated 30.11.2010 was dismissed by the trial Court and findings recorded by the trial Court have been affirmed in appeal.

Ms Santosh Kumar filed an application for passing a final decree on the basis of preliminary decree dated 18.07.2006 passed in suit for partition in respect of property detailed in para 1 of the application dated 13.09.2006. In the proceedings, Charles Weir, respondent No. 11 was proceeded against ex parte. As a matter of fact, none of the respondents caused appearance and ultimately final decree was passed in favour of respondent/applicant vide order dated 30.11.2010 by the Civil Judge (Junior

Division), Ajnala. Charles Weir filed the application for setting aside ex-parte judgment and final decree dated 13.11.2010 on the premise that he was never served in the case either by way of personal service or *munadi*. It has been averred that he was not aware of pendency of the proceedings till 26.05.2012 when Bailiff of the Court went to give possession of the suit property and persons from the locality informed him about the ex-parte decree.

The respondent filed response to the application resisting claim of the petitioner/applicant for setting aside ex parte judgment and decree. The trial Court framed the following issues for determination:-

- 1. Whether the applicant was properly served or not?*
OPA
- 2. Whether the final decree dated 30.11.2010 issued liable to be set aside? OPA*
- 3. Whether the application is within limitation? OPA*
- 4. Relief*

After permitting the parties to adduce evidence in support of their respect contentions, the trial Court answered issues No. 1 to 3 against the petitioner/applicant and eventually the application was ordered to be dismissed. As has been noticed hereinbefore, the findings of the trial Court were affirmed in appeal.

Counsel for the petitioner has vehemently argued that as the petitioner was not properly and duly served in the matter, the ex parte judgment and decree is liable to be set aside. It is further submitted that the application for setting aside ex parte judgment and decree was filed as soon as the petitioner learnt about the same when Bailiff of the Court went to the spot for delivery of possession and the petitioner/applicant received

information from people living in the locality. It is further argued that a serious prejudice is likely to be caused to the petitioner/applicant in case ex parte judgment and decree is not set aside and an opportunity to contest the proceedings is not provided to the petitioner.

I have heard counsel for the petitioner, perused the paper book and records of the proceedings of final decree as well as proceedings conducted under Rule IX Rule 13 CPC.

Indisputably, the final decree in respect of partition of joint land on the basis of application filed by the respondent/applicant was passed on 30.11.2010. The application for setting aside the ex parte judgment and decree was filed on 29.05.2012. Under Article 123 of the Limitation Act, 1963, an application for setting aside ex parte judgment and decree by a party who has been served in the case can be filed within a period of 30 days from the date of passing of the decree and within a 30 days from the date of knowledge by a party who has not been served in the proceedings. In the case at hand, plea of the petitioner is that he was not properly served in the matter and did not have knowledge of passing of the ex parte judgment and decree at any time prior to 26.05.2012. The learned Trial court framed a specific issue qua question of limitation, onus whereof was placed upon the petitioner. Admittedly, Charles Weir did not appear in the witness box in order prove averments made in the application either with regard to he being not properly served or application having been filed within a period of 30 days from the date of knowledge of ex parte judgment and decree. However, Shri Joginder Singh, an attorney of Charles Weir appeared in the witness box and tendered into evidence his affidavit

Ex.AW/1/A by way of examination-in-chief. The affidavit filed by the attorney is conspicuously silent that the petitioner came to know about passing of the ex parte judgment and decree on 26.05.2012. In cross examination, he has deposed (Punjabi version translated into English) in the following terms:-

“Charles Weir resides at Ahmedabad but I cannot tell his address. I purchased the land from Charles Weir. I cannot tell the date, month and year. Registry has been annexed. Voluntarily stated, it was purchased 12/13 years back. I do not know in which year case for partition was filed against Charles Weir. I do not know on which date, he was proceeded against ex parte. I do not know which Judge decided the case and when. I do not know when Charles Weir came to know about ex parte proceedings. I do not know whether Charles Weir was aware of pendency of case or not. I do not know whether he remained appeared or not. I do not know as to on which date and against how many persons Santosh Kumari filed the case.”

Charles Weir did not appear in the witness box to depose about facts to his personal knowledge particularly the fact when he came to know about passing of the ex parte judgment and decree. The plea in the application that he (petitioner) came to know about the decree from persons living in the locality is quite vague because there is no reference to any particular person who informed Charles Weir about visit of Bailiff. Joginder Singh, attorney of Charles Weir has not deposed anything about date of knowledge of ex parte decree by Charles Weir. As a matter of fact, perusal of cross examination of Joginder Singh would reveal that Charles Weir lost his interest in the *lis* as he had already sold his share in favour of

Joginder Singh, attorney holder. Taking into consideration aforesaid extract from cross examination of Joginder Singh, it can be safely held that the petitioner/applicant has failed to adduce even an iota of evidence to establish his plea that he came to know about ex parte judgment and decree on 26.05.2012, therefore, application filed for setting aside the said decree on 29.05.2012 is within limitation even if his plea is accepted that he was not properly served in the proceedings. In this view of the matter, I do not find any error much less illegality in the consisting findings recorded by the Courts below answering issue of limitation against the applicant. As the petitioner failed to file the application within the stipulated period, from the date of alleged knowledge on 26.05.2012 in regard to ex parte decree dated 30.11.2010, this Court need not to advert to the issue whether the petitioner was properly served or otherwise.

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

(Rekha Mittal)
Judge

19.12.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No