

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.8174 of 2014 (O&M)

Date of Decision.15.09.2016

Radha Krishan

.....Petitioner

Vs

Chandra Prakash Narula

.....Respondent

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Ms. Divyastuti Parsoon, Advocate
for the respondent.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

-.-

AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application at the instance of the defendant-Chandra Prakash seeking setting aside of the ex parte judgment and decree dated 21.08.2004 and ex parte order dated 7.8.2001 had been allowed.

Mr. Kunal Dawar, learned counsel for the petitioner submits that agreement to sell dated 13.01.2000 in respect of house No.805, Block B, Sector 49, Sainik Colony, Faridabad for total consideration of ₹16,30,000/- was entered between the plaintiff and the defendant. Total amount stated to have been paid is ₹10,50,000/-, ₹7 lacs at the time of agreement and ₹3.5 lacs on 10.02.000. The target date was 15.07.2000. Since the petitioner-plaintiff had apprehension that respondent-defendant/vendor was trying to alienate the property, he instituted the suit on 25.04.2000 for permanent injunction against the defendant from alienating the suit property. In the said suit, the respondent appeared

initially through his counsel Sh. R.K. Gupta on 15.05.2000 and thereafter

through Mukesh Sehgal, Advocate on 24.05.2000. Since the cause of action accrued for filing suit for specific performance, the same was filed on 21.07.2000 and previous suit was withdrawn on 08.08.2000. As per the contention of Mr. Dawar, respondent had put in appearance through Mukesh Sehgal, Advocate on 24.05.2000 and thereafter on 21.11.2000. This fact is evident from the zimni orders extracted in sub para (iv) of para 2 of the ground of revision petition and thereafter, on 07.08.2001 was proceeded ex parte. The aforementioned suit was decreed vide ex parte judgment and decree dated 21.08.2004. During the interregnum, the respondent stated to have surreptitiously sold the property to one Jagat Singh for a paltry amount of ₹4,95,000/- on 23.05.2000. Jagat Singh instituted third party objection on 06.08.2007 which was dismissed by the trial Court on 12.08.2010. The respondent-defendant, Chander Parkash was party in the aforementioned proceedings. The appeal filed against the order dated 12.08.2010 was also dismissed on 15.02.2012. ESA bearing No.10 of 2012 has also been dismissed vide order 19.03.2012 by this Court.

He further submits that the application under Order 9 Rule 13 CPC was filed on 17.11.2010 but the same has erroneously been allowed by ignoring the fact that the respondent-defendant had put in appearance through the counsel as the process server was not produced or examined. In fact, the petitioner-plaintiff made an effort to summon him but the report came that he had died. The onus of proving that the respondent-defendant was not served with summons had not been discharged, in essence, no documentary evidence has come on record to this effect. All these factors have escaped the notice of the Courts below. Even the vakalatnama filed by Mukesh Sehgal has been proved on record but the Court below has given it

a different colour. The application was not supported by any application for condonation of delay, thus, urges this Court for setting aside the order under challenge.

Ms. Divyastuti Parsoon, learned counsel appearing for the respondent submits that in pursuance of the order under challenge, the trial of the suit commenced and it is at the stage of defendant's evidence though thereafter, this Court had stayed the further proceedings. The respondent-defendant acquired the knowledge of the ex parte judgment and decree only in the appeal instituted by Jagat Singh against the dismissal of the third party objections. The appeal was instituted on 31.08.2010 and the application has been filed on 17.11.2010. Therefore, there was no delay, as the application was moved immediately on acquiring the knowledge i.e within one month. The factum of appearance of counsel in the suit for injunction was not proved as the records of Court below showed that there was no vakalatnama. She further submits that even vakalatnama of Mukesh Sehgal in suit for specific performance is not complete. It does not disclose full particulars. In fact, the respondent had parted with the possession on the date of sale deed way back in May, 2000 and shifted to house No.641, Sector 49, Sainik Colony, Faridabad. The summons were sent at the old address i.e. House No.805, Block B, Sector 49, Sainik Colony, Faridabad and there is no alleged valid service. The appearance of Mr. Mukesh Sehgal is neither here nor there. All these factors have been brought to the notice of the Court below. It is too late in a day to put the clock back as the trial has already reached to advanced stage, thus, urges this Court for confirming the order under challenge.

I have heard learned counsel for the parties, appraised the paper

book and cannot remain oblivious of the fact that after the allowing of the application under Order 9 Rule 13 CPC, the suit is at the stage of defendant's evidence. As per the facts noticed above, both the parties had not discharged the onus inasmuch as that neither the respondent-defendant has proved any documentary evidence with regard to shifting of premises to House No.641, Sector 49, Faridabad nor the petitioner-plaintiff has been able to prove that the application filed under Order 9 Rule 13 CPC is barred by limitation. The previous proceedings in suit for permanent injunction is meaningless. The objections at the instance of Jagat Singh as third party, claiming title of the suit property on the basis of sale deed have been dismissed upto this Court but the fact remains that no sane person would stay in the same property after having no saleable right. It is too late in a day to put the clock back by setting aside the order under challenge as the trial had reached to final stage but I cannot shut my eyes to the fact that the respondent had been instrumental in delaying adjudication of the suit and as well as much time had been spent in filing the application under Order 9 Rule 13 CPC and also consumed time of the Court in deciding the aforementioned application. Since it is too late in a day to put the clock back and it would further complicate the matter and delay the adjudication of the suit, I deem it appropriate to uphold the finding subject to payment of costs of ₹1 lac to be paid the plaintiff before the Court below against the valid receipt within a period of 30 days from today, failing which the order under challenge shall be deemed to have been set aside. It is expected that the respondent-defendant will not make further attempt in delaying the adjudication of the suit and the trial Court is directed to expedite the disposal of the suit as early as possible keeping in view the fact that the suit

is of the year 2000.

The revision petition is disposed of with the above observations. Nothing observed herein shall be construed as expression of opinion on merits of the suit pending between the parties.

(AMIT RAWAL)
JUDGE

September 15, 2016
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No