

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

**CR No.122 of 2017 (O&M)
Date of Decision:21.08.2017**

Hawa Singh deceased through LRs

...Petitioners

Versus

Smt. Bharpai and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Shilak Ram Hooda, Advocate
for the petitioners.

ANIL KSHETARPAL, J.

Defendants are in Revision Petition against the concurrent finding of fact arrived at by the Courts below.

Plaintiff had filed a suit for declaration and possession. The suit was instituted on 20.11.1992. Pursuant to the service of notice, defendants-petitioners appeared before the Court through counsel Sh. C.S. Panwar, Advocate on 11.02.1994 and filed memo of appearance. The Court adjourned the case to 22.04.1994. On 22.04.1994, Sh. C.S. Panwar, Advocate filed Vakalatnama (Power of Attorney) bearing thumb impressions of defendants, namely, Hawa Singh and Ram Chander. Thereafter, Sh. C.S. Panwar, Advocate repeatedly appeared on behalf of the defendants in the Court on various hearings. However, on 15.12.1994, when defendants were to pay costs of Rs.50/- for not filing the reply, the counsel stopped appearing. Even thereafter, the suit remained pending for

almost 12 years. The ex parte decree was passed on 11.09.2006.

Defendants, thereafter, filed an application for setting aside the ex parte decree on 26.11.2008. Defendants-petitioners stated in the application that they had not engaged Sh. C.S. Panwar, Advocate. After receipt of reply, the Court framed issues and allowed the parties to lead their evidence. Sh. C.S. Panwar, Advocate was examined as AW1. Although, he stated that he does not know personally Hawa Singh and Ram Chander, but he stated that he has signed the Vakalatnama (Power of Attorney). He further stated that he had been appearing for Hawa Singh and Ram Chander on different dates of hearing. He stated that Power of Attorney bearing thumb impressions of Hawa Singh and Ram Chander was handed over to him by someone else.

The learned trial Court after noticing that the defendants have failed to prove that the Vakalatnama filed by Sh. C.S. Panwar, Advocate does not bear their thumb impressions, dismissed the application. Appeal filed by the defendants was also dismissed after reappreciating the evidence available on the file.

Learned counsel for the petitioners has submitted that the plaintiffs have failed to prove that on the Vakalatnama, Hawa Singh and Ram Chander had put their thumb impressions. Therefore, the ex parte decree should have been set aside. He has further submitted that the Courts should be liberal in setting aside the ex parte decree and the parties must be given opportunity to contest the suit on merits.

I have heard the learned counsel and with his able assistance

gone through the record of the case.

The onus to prove that the defendants had not engaged Sh. C.S. Panwar, Advocate was on the defendants. Defendants did not lead any evidence to prove that Sh. C.S. Panwar, Advocate was not engaged by them. The Vakalatnama (Power of Attorney) executed in favour of Sh. C.S. Panwar, Advocate bears thumb impressions of both the defendants. Sh. C.S. Panwar, Advocate appeared before the Court on number of hearings. It was only when the case was adjourned for filing written statement on payment of costs of Rs.50/-, Sh. C.S. Panwar, Advocate stopped appearing.

In view of the facts stated above, it was for the defendants to prove that the Vakalatnama (Power of Attorney) executed by the defendants in favour of their advocate did not bear their thumb impressions. But they have failed to lead any evidence. Therefore, there is no force in the first submission of the learned counsel for the petitioners.

The next submission of the learned counsel is that the Court should be liberal in setting aside the ex parte decree is first to be noticed and rejected. On passing of a decree, a right accrues in favour of the plaintiff. Such a right cannot be defeated merely on the asking of one of the parties. The facts available on the file clearly shows that the suit was instituted in the year 1992. Sh. C.S. Panwar, Advocate appeared on behalf of the defendants, first on the basis of memo of appearance and thereafter, a Vakalatnama was filed having thumb impressions of the defendants. Thereafter, he kept on appearing on various hearings. In these circumstances, there is no force in the argument of the learned counsel for

the petitioners.

For the reasons recorded above, I do not find any good ground to interfere with the concurrent finding of fact arrived at by the Courts below.

Revision petition is dismissed.

21.08.2017
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(ANIL KSHETARPAL)
JUDGE

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