

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

C.R. No. 1418 of 2017
Date of decision: 30.05.2017

Mukhtiar Singh

....Petitioner(s)

Versus

Sukhdev Singh and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Ms. Natasha Munjal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

Defendant no. 2-petitioner is challenging the order dated 21.05.2013 (Annexure P-1), under Article 227 of the Constitution of India, whereby, the application for setting aside the ex parte judgment dated 31.07.2009 decreeing the suit for specific performance was dismissed. The order has been upheld in appeal by the Additional District Judge, Ferozepur on 24.10.2016 (Annexure P-2).

The reasoning which weighed with the Courts below was that the petitioner had been served for 01.06.1998 and had been shown to be represented through Sh. S.S. Gill, Advocate before the Trial Court on 04.12.1998 and thereafter also on 02.02.1999. The decree was thereafter passed on 31.07.2009 and the application under Order 9 Rule 13 CPC was filed on 22.03.2010 and the alleged date of knowledge was set up as 12.03.2010. It was accordingly held that it was not within limitation of 30 days' period, as prescribed.

The Appellate Authority has noticed that the petitioner was

proceeded against ex parte on 25.01.2000 and till the filing of the application which was a decade later and the argument that he could not contact his counsel for 10 years was not justified. It was also noticed that the petitioner was left with no interest in the suit land and, therefore, no record of illness or that the case of similar title was also pending had been produced, which had led to the conclusion. It was noticed that same counsel had been engaged in the second case also and, therefore, the application under Order 9 Rule 13 CPC was neither within the period of limitation and there was knowledge of being proceeded against ex parte.

A perusal of the ex parte order would go on to show that the petitioner is son of Idda and the suit was for specific performance of an agreement dated 30.07.1997 which had been executed by the father. Defendant no. 15 in the suit had taken the plea that he was a bona fide purchaser of the land measuring 15 kanals 10 marlas and he was having no prior notice of the alleged agreement in dispute. Accordingly, the suit was decreed and defendant no. 15-Roor Singh was asked to join hands with defendants no. 1 to 14, who are the legal representatives of deceased Idda to execute the sale deed in favour of plaintiff no. 1-Sukhdev Singh.

Thus, it is apparent that the contest was of defendant no. 15 and the petitioner had no interest left in the suit property as his father had sold the same to defendant no. 15 Roor Singh. Nothing has been shown that Roor Singh ever contested the said judgment though it had been held out that he was a bona fide purchaser as such. In such circumstances, the findings which have been recorded that it was only a proxy litigation for the benefit of Roor Singh were well justified. Sufficient cause had to be shown for non-appearance. The counsel had been duly appearing before the Court

and accordingly absented. Proceedings carried on for almost a decade, on account of the contest set out by the purchaser and in such circumstances, the application for setting aside is only an apparent ploy to deny the fruits of litigation to the plaintiff.

Accordingly, finding no merit in the present revision petition, the same is dismissed in limine.

30.05.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No