

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No. 3051 of 2016

Date of decision : 20.9.2017

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Mohamadda

.....Petitioner

Versus

Ramdass

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

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RITU BAHRI, J.

The petitioner has come up in the present revision petition against the order dated 14.9.2015 passed by the District Judge, Mewat, whereby appeal against the order dated 26.4.2013 passed by the Additional Civil Judge, (Sr. Division), Ferozepur Jhirka, Mewat at Nuh has been dismissed. Vide the judgment of the trial court dated 26.4.2013, application filed by the petitioner for setting aside the ex parte order dated 12.3.2001 and judgment and decree dated 13.1.2005 has been dismissed

Briefly stated, the facts of the case are that the respondent had filed a suit for specific performance of agreement to sell dated 26.6.1997, whereby the present petitioner had agreed to sell his suit land for a sum of Rs.1,00,000/- and had received Rs.80,000/- as earnest money in the

presence of witnesses. In this suit, summons were issued to him along with copy of plaint for 12.3.2001 through registered post. The petitioner received the registered letter and signed the acknowledgment but did not appear in the Court and was proceeded against ex parte on 12.3.2001. Thereafter a judgment and decree dated 13.1.2005 was passed in favour of the respondent. The case of the present petitioner is that he came to know about the said ex parte order dated 12.3.2001 and judgment and decree dated 13.1.2005 in the year 2010. In the application for setting aside the ex parte order dated 12.3.2001 and judgment and decree dated 13.1.2005 filed by the petitioner, he pleaded that he had taken the loan from the respondent for which his signatures/thumb impressions were taken by the respondent on some blank papers and a photo as a security to repay the debt. Thereafter in connivance of the deed writer, the respondent forged these papers into an agreement to sale to grab the precious land of the petitioner.

In the present application, the issues were framed as under:

- 1) Whether the ex parte order dated 12.3.2001 as well as judgment and decree dated 13.1.2005 are liable to be set aside on the grounds mentioned in the application? OPA.*
- 2) Whether the application is not maintainable in the present form? OPR.*
- 3) Whether the application is time barred? OPR.*
- 4) Relief.*

The parties led their respective evidences. The petitioner himself examined himself as PW-1 and examined Budh Singh, Chowkidar as PW-2 and tendered the following documents:

- i) Ex. PW1/B Certified copy of order dated 30.1.2001.
- ii) Ex. PW1/C certified copy of summons for 6.1.2009.
- iii) Ex. PW1/D certified copy of agreement to sell dated 26.6.1997.

On the other hand, respondent himself appeared as RW-1 and examined Madan Lal Yadav, Process Server as RW-2 and tendered document Ex.R1 acknowledgment and Ex.R-2 certified copy of summons in execution for 25.3.2006.

After going through the evidence led by the parties, the trial Court returned a finding against the petitioner. Notice of the suit was served upon the petitioner through registered post and his signed acknowledgment was available on record. Further in the year 2006 during the execution proceedings, the applicant refused to accept the summons in the presence of Budh Singh Chowkidar. Though Budh Singh had appeared before the Court, in favour of petitioner, he did not deny his thumb impressions on the report. The trial Court examined the signatures on the acknowledgment and the affidavit tendered in evidence by the petitioner in the Court while appearing as PW-1 and held that both the signatures belong to one and the same person. The report of the process server and certified copy of the summons were sent for village Kaliawas where the petitioner resided. The report was witnessed by Budh Singh Chowkidar and his thumb impressions were also affixed on the summons.

In view of the above said evidence, the application for setting aside the ex parte order dated 12.3.2001 and judgment and decree dated 13.1.2005 was dismissed

On appeal, the order passed by the trial Court was affirmed by the lower appellate Court. In the order dated 14.9.2015, in paragraph 12, it has been observed that the present petitioner was residing in village Kaliawas and he had made an attempt to show that his services had been effected at the address of Village Sakras. In the deposition of RW-2 Madan Lal, Process Server, he admitted that Mohammeda was residing in village Kaliawas. He admitted that on 21.1.2006, he did not go to village Kaliawas with summons. Perusal of statement of RW-2 Madan Lal, Process Server shows that again he went to village Kaliawas. Order dated 25.3.2006, indicates that the judgment debtor had refused to take summons and he was proceeded against ex parte on that date on account of his refusal to receive the summons. Summons issued for 25.3.2006 shows the name of both villages i.e Sakras as well as Kaliawas and it shows that the petitioner refused to take the same and copy of the same was affixed at his house in the presence of Shri Budh Singh, Chowkidar. Sh. Budh Singh, Chowkidar also affixed his thumb impressions on the summons of the petitioner but no attempt was made to get compared the thumb impressions of Sh. Budh Singh, Chowkidar on the summons. Even if the deposition of Budh Singh Chowkidar is to be ignored as he was won over by the respondent, the evidence of RW-2, Madan Lal, Process Server shows that he had gone to village Kaliawas and effected service on the petitioner in the presence of Budh Singh, Chowkidar.

A perusal of the order shows that the summons in the suit had

been served upon him through registered post and his signatures on the acknowledgment have been compared by the trial Court with the signatures on the affidavit tendered in evidence by the Court while appearing as PW-1 and it was held that both the signatures were of same person. Even in the execution proceedings, summons have been duly served as per the statements of Process Server RW-2 and witness who had affixed his thumb impressions in the presence of the petitioner. The petitioner had knowledge of the suit as well as the execution proceedings. Moreover, the application for setting aside the ex parte order dated 12.3.2001 and judgment and decree dated 13.1.2005 was filed in the year 2010 way beyond the period of limitation.

In view of all that has been discussed above, present revision petition is dismissed.

20.9.2017

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No