

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

Civil Revision No.4595 of 2016 (O&M)

Date of Decision : 18th April, 2017

Chunni Lal and others

..... Petitioners

Versus

Nanak and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Aditya Jain, Advocate
for the petitioners.

Mr. Chirag Kundu, Advocate
for respondent No.5.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of the plaintiffs, filed under Article 227 of the Constitution of India, is directed against the order dated 16.05.2016 (Annexure P-1), whereby the learned trial Court allowed the application under Order 9 Rule 13 of the Code of Civil Procedure, filed by respondent No.5, who was not one of the defendants in the suit.

Notice of motion was issued.

Heard learned counsel for the parties.

It has gone undisputed before this Court that respondent No.5 namely Yashpal son of Sh. Gokal moved an application Under Order 9 Rule 13 CPC through his general power of attorney, inspite of the fact that he was not party to the suit filed by the plaintiffs-petitioners. Said application moved by respondent No.5 was allowed by the learned trial Court vide impugned order dated 16.05.2016.

Learned counsel for the petitioners has been found justified in contending that in case respondent No.5-Yashpal was feeling aggrieved against the ex parte decree dated 18.11.2006, he could have challenged that ex parte judgment and decree only by way of appeal under Section 96 CPC. This factual as well as legal aspect of the matter could not be denied by the learned counsel for the respondent and rightly so it being a matter of record.

Since respondent No.5 Yashpal was admittedly not one of the defendants to the suit filed by the petitioners-plaintiffs, no application under Order 9 Rule 13 CPC would be maintainable on his behalf. However, it is equally true that if respondent No.5 Yashpal was feeling aggrieved against the ex parte judgment and decree dated 18.11.2006, he would be entitled to challenge the same by filing his appeal before the learned Court of competent jurisdiction.

Having said that, this Court feels no hesitation to conclude that the learned trial Court exceeded its jurisdiction while passing the impugned order and the same cannot be sustained.

Since the learned trial Court failed to appreciate the above said material aspect of the matter while passing the impugned order, it can be safely concluded that the learned trial Court committed serious error of law while allowing the application of respondent under Order 9 Rule 13 CPC by passing the impugned order and the same cannot be sustained for this reason also. No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found patently

illegal, the same cannot be sustained. Accordingly the impugned order dated 16.05.2016 (Annexure P-1) passed by the learned trial Court is hereby set aside. This revision petition deserves to be accepted. However, it is made clear that respondent No.5 Yashpal Singh son of Gokal would be entitled and at liberty to challenge the abovesaid ex parte judgment and decree dated 18.11.2006 either by filing an appeal under Section 96 of the Code of Civil Procedure or by way of an appropriate civil suit before the learned Court of competent jurisdiction.

Resultantly, with the above said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

18th April, 2017*mamta***(RAMESHWAR SINGH MALIK)
JUDGE**

Whether speaking/reasoned

Yes/No

*Whether Reportable :**Yes/No*