

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R. No. 4251 of 2017

Date of decision:- 11.08.2017

Ajinder Preet Kaur

...Petitioner

versus

Ranjit Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Gurinder Pal Singh, Advocate
for the petitioner.

Mr. Angrez Singh Dhindsa, Advocate
for the respondents.

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 13.08.2013 (Annexure P-2) passed by the learned Addl. Civil Judge (Sr. Divn.) Sirsa vide which the petitioner has been ordered against ex parte and impugned order dated 28.03.2017 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.) Sirsa, vide which the application for setting aside impugned order has been dismissed

Brief facts of the case are that respondent No. 1-plaintiff (for short 'respondent No. 1) filed a suit for declaration to the effect that he is still continued to be owner and in possession of one residential house constructed in the year 1971 bearing No. 70, B-Block (Residential Area), Municipal House Tax Unit No. 21/70-B. Respondent No. 1 was owner of the above said house and has agreed to sell the property to the petitioner by way of agreement dated 04.07.2005 for an amount of Rs.6,00,000/- and the date of the sale deed was fixed as 04.07.2006. A receipt for earnest money has also been executed in this regard by respondent No. 1. However, respondent No. 1 could not make arrangement for alternative accommodation

and requested the petitioner that his daughter was to be married and sought extension of time because he did not want to disclose the factum of sale publicly. With the consent of both the parties, the time for registration of the sale deed was extended up to 03.08.2007. However, thereafter, respondent No. 1 sought some more time. Accordingly, petitioner did not press for registration of sale deed on 03.08.2007. But respondent No. 1 cleverly filed a suit in the year 2008 asking for specific performance of agreement dated 04.07.2005. However, the suit was compromised and was withdrawn by respondent No. 1, as the petitioner appeared before the concerned Court and made a statement that she is ready for execution of the sale deed by making payment of remaining amount. Thereafter, a sale deed was registered on 24.12.2008 in which the photograph of the vendor was also there. The possession of the property was handed over to the petitioner. Even in the registered sale deed, there is a reference of the Civil suit filed by the respondent No. 1 for execution of the sale deed. Thereafter, after 05 years of the sale deed and handing over the possession to the petitioner, respondent No. 1 filed a suit for declaration challenging the sale deed dated 24.12.2008 and also questioned the order dated 20.12.2008 passed in civil suit filed by him on the basis of which the sale deed was registered by respondent No. 1.

Thereafter, respondent No. 1 again approached the petitioner for giving him the house on rent and entered into agreement for 03 years from 24.03.2009 to 23.02.2012. Respondent No. 1 then vacated the house on 10.10.2010. Petitioner thereafter, joined as Administrator of Guru Nanak Public School, Sirsa and permanently residing at House No. 66, C Block, Sirsa and this fact is in the knowledge of respondent No. 1. But in the present suit, instead of giving correct address of the petitioner, respondent

No. 1 sent the summons at old address of village Chak Arayina where respondent No. 1 was married and also managed the report at the back of the petitioner to the effect that petitioner was not available at the spot and her nephew Bhim has been served summons along with copy of plaint. A copy of summon dated 07.06.2013 along with report dated 21.06.2013 (Annexure P-1 colly). On the basis of the above said report, petitioner was proceeded against ex parte on 13.08.2013 (Annexure P-2). Thereafter, the application of the petitioner under Order 9 Rule 7 has also been dismissed on 28.03.2017 (Annexure P-4). Hence the present revision petition.

Learned counsel contends that no service was ever affected on the petitioner. Petitioner did not reside in the given address. The petitioner has no nephew with the name of Bhim. Further the summon has not been got attested or verified from any chowkidar, Lambardar, Sarpanch or any member of the Panchayat. Further the new address of the petitioner i.e #66, C-Block, Sirsa is well within the knowledge of respondent No. 1 and respondent No. 1 deliberately gave the address of the petitioner, which he has left few years back.

A bare perusal of the impugned order shows that the order for proceeding against ex parte was passed on 13.08.2013 and the application under Order 9 Rule 7 CPC has been filed on 29.08.2016 i.e after more than 03 years of passing of impugned order. As per petitioner herself, her husband is practicing advocate at District Court Sirsa itself and thus it was held to be impossible that she was not aware regarding the proceedings. Further petitioner has not led any evidence to show that she used to live with her son at Kota and thereafter, at Karnataka and was visiting Sirsa off and on.

A bare perusal of the summons dated 25.07.2016 and 29.07.2016 shows that the service was effected in the school where the petitioner was working at Sirsa.

Thus, the petitioner has been duly served in the school where she was working. She filed the application under Order 9 Rule 7 after a gap of more than 03 years. Even her husband is a practicing advocate District Court Sirsa, as admitted by the petitioner.

The above said grounds were sufficient enough to pass the impugned order. Accordingly, the revision petition is dismissed being devoid of merits.

11.08.2017

G Arora

(*RITU BAHRI*)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes