

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5599 of 2014 (O&M)
Date of Order: 07.11.2017

Tirath Singh and others

..Petitioners

Versus

Nirbhai Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. M.L.Saggar, Sr. Advocate, with
Ms. Veenu Garg, Advocate,
for the petitioners.

Mr. S.S.Panag, Advocate,
for respondent nos.1 and 2.

ANIL KSHETARPAL, J(Oral)

Petitioners who were defendants no.2, 3 and 4 in the civil Suit had filed an application for setting aside the ex-parte decree dated 16.07.1993.

Two suits were filed impleading the petitioners who are defendants no.2, 3 and 4 in the Courts. First suit was filed in 1983 by Nirbhai Singh and Tej Kaur, whereas second suit was filed by Kamaljit Singh on 05.11.1985. In both the suit, defendants no.2, 3 and 4 were party. Both the suits were consolidated on 05.04.1986. In one suit i.e, suit filed by Kamaljit Singh, petitioners were served and represented by a counsel, whereas in the other suit which is connected and consolidated, petitioners did not chose to appear. Both the suit initially were decided by a common judgment on 30.09.1987. The suit filed by Kamaljit Singh was dismissed

whereas suit filed by Nirbhai Singh and Tej Kaur was decreed.

Kamaljit Singh filed an appeal in both the cases. The appeal was accepted. Both the suits were once again remanded to the trial Court. After re-trial, both the suits were once again decided by a common judgment and decree dated 16.07.1993. Again the suit filed by Nirbhai Singh and Tej Kaur were decreed and the suit filed by Kamaljit Singh was dismissed.

Petitioners filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex-parte decree.

Both the Courts after appreciating the evidence available on the file, dismissed the application under Order 9 Rule 13 of the Code of Civil Procedure and refused to set aside ex-parte decree dated 16.07.1993 in the suit filed by Nirbhai Singh and Tej Kaur. The Courts have further noticed that the vendors of the petitioners had contested the suit and lost. The Courts have further held that the petitioners were served but they did not chose to appear. Both the Courts have further held that the petitioners were having knowledge of the judgment and decree because they were represented through counsel in a connected case which was decided by the same judgment.

I have heard counsel for the parties at length and with their able assistance gone through the paper book.

Learned counsel for the petitioners has vehemently argued that the sale deed in favour of the petitioners has been set aside and, therefore, the petitioners should be given opportunity to contest the litigation.

The judgment and decree was passed on 16.07.1993, whereas application for setting aside ex-parte decree has been filed on 20.02.1999

i.e., almost 5 years and 5 months. Further it is not in dispute that both the suits were decided by a single judgment on 16.07.1993. In one suit, petitioners were represented through counsel. They cannot now claim that they were not in knowledge of the judgment and decree.

Still further, the learned trial court after framing the issue granted opportunity to the petitioners to lead evidence to prove that the case set up by them in application under Order 9 Rule 13 of the Code of Civil Procedure. Both the Courts after appreciation of evidence have found that plaintiffs failed to establish their case. The Court has noticed that the witness examined by the petitioner i.e. chowkidar of the village although tried to help them in examination-in-chief but in cross examination his testimony was totally shaken when he admitted thumb impressions on the report of the process server as well as on the proclamation. The courts have further noticed the evidence of the petitioner i.e., Tirath Singh and held that his evidence is not trustworthy.

Taking into consideration the aforesaid facts, this Court does not find any good ground to interfere with the orders passed by the Courts below.

The civil revision is dismissed.

November 07, 2017
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No