

CR No.6565 of 2016
Date of Decision: 28.09.2017

Vs

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Harsh Manocha, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.(Oral)

[2]. Plaintiff/respondent No.1 filed a suit for declaration i.e. Civil Suit No.208 dated 29.09.2005 in respect of joint Hindu coparcenary and ancestral property of plaintiff and defendants No.1 to 9.

[3]. Defendants No.1 to 3/petitioners appeared in the suit and contested the claim of the plaintiff. They have been appearing in the suit, but on 10.09.2012, when the plaintiff was present for further cross examination, they did not turn up and were proceeded against *ex parte*. Defendants No.1 to 3/petitioners kept mum for about 4 years on the ground that in the year 2012, they found some documents in Urdu etc. and the defendants came to know that one document was a Will, which was executed by late Vidya Nath Mehta in favour of Rishi Mehta and Rahul Mehta qua property bearing No.B-VII/1713. Since the plaintiff is cousin of defendants No.1 to 3, therefore the fact was brought to the notice of the plaintiff and plaintiff assured that he will withdraw the suit qua defendants No.1 to 3. The aforesaid fact was claimed to be a sufficient ground for moving a belated application for setting aside the *ex parte* order dated 10.09.2012. The application for setting aside the *ex parte* order was filed on 05.09.2016.

[4]. Plaintiff filed a suit seeking direction for declaring the Will dated 04.05.1992 in favour of the answering defendant and a sale deed executed by answering defendant as illegal, null and void.

[5]. The reasons for the absence of the defendants were not considered favourably by the trial Court. No Will was

attached with the application. The application was dismissed vide order dated 12.09.2016. However, it appears that the permission was granted to the defendants to join the proceedings at the stage of passing of the order i.e. 12.09.2016 (though there is cutting of word 'not' in the certified copy without initial of the Presiding Officer).

[6]. An application was filed under Order 6 Rule 17 CPC for amendment of the written statement on 13.09.2016. The said application has also been dismissed by the trial Court by noticing the fact that the application for setting aside the *ex parte* order was dismissed on 12.09.2016. In view of ratio laid down by Hon'ble Apex Court in **Arjun Singh Vs. Mohinder Kumar and others, AIR (1964) SC 993**, defendants can join the proceedings, but they cannot be relegated to a stage for re-opening the proceedings from the date when they were proceeded against *ex parte* and cannot insist the Court to start a *de novo* trial. In the event of accepting the prayer for amendment of the written statement, the same will relate back to the date of filing of the written statement which is simply not admissible at this stage in view of attending circumstances of the case.

[7]. On consideration of aforesaid fact, I do not find any plausible explanation in favour of the petitioners to accept this

revision petition. This revision petition is accordingly dismissed.

September 28, 2017.

(RAJ MOHAN SINGH)
JUDGE

Prince

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No