

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

CR No.7267 of 2016(O&M)

Date of decision: 19.9.2017

Sheena Rani

.....Petitioner

VERSUS

Harvinder Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Sandeep Bansal, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 27.09.2016 (Annexure P-4) passed by the trial Court whereby application of respondents No.2 to 6 for setting aside the ex parte judgment and decree dated 05.11.2011 has been allowed and the suit filed by the petitioner has been restored on the board of the trial Court for decision afresh.

Counsel for the petitioner would urge that the petitioner and her minor son born out of wedlock of petitioner and respondent No.1 filed a civil suit to assail the sale deed executed by respondent No.1 in favour of respondents No.2 to 6 with a clear intent to cause prejudice to the petitioner and her minor child. The respondents failed to cause appearance despite knowledge of pendency of the proceedings; were proceeded against ex parte and eventually the proceedings culminated in ex parte judgment and decree dated 05.11.2011. It is argued with vehemence that as respondents No.2 to 6 had knowledge of pendency of the proceedings on the basis of notice issued vide registered covers, received back with the

report of refusal, application filed by respondents No.2 to 6 on 01.02.2012 is otherwise clearly barred by limitation. It is further argued that as no decree for possession in respect of the land in question measuring 65 kanals 6 marlas was passed in favour of the petitioner and her co-plaintiff, there was no occasion for them to go to the spot for getting possession of the suit land which could be a source of information for the contesting respondents that an ex parte decree has been passed against them, as has been alleged. Another submission made by counsel is that respondents No.2 to 6 have failed to adduce satisfactory much less tangible and convincing evidence to rebut the presumption attached to endorsement made by postal authorities on the summons sent through registered cover, stated to be refused by the addressee. For this purpose, he has relied upon judgment of Hon'ble the Supreme Court **Gujarat Electricity Board and another Vs. Atmaram Sungomal Poshani, AIR 1989 SC 1433.**

I have heard counsel for the petitioner, perused the paper-book and the records.

The respondents/applicants examined as many as 12 witnesses namely Shinderjit Kaur AW1, Ram Chander, Lambardar, AW2, Baljit Singh Registration Clerk AW3, Balwinder Singh, Clerk office of Tehsildar Election AW4, Darshan Singh Clerk Punjab State Power Corporation Limited AW5, Rajwant Kaur one of the applicants/defendants AW6, Dilbagh Singh Registration Clerk AW7, Balwinder Singh Cashier AW8, Ram Asra LDC AW9, Sandeep Kumar Clerk Judicial Record Room Hoshiarpur AW10, Sh. B.R. Dadra, Advocate AW11 and Rupinder Kaur, Civil Ahlmad, AW12.

To rebut evidence of the respondents/applicants, Sheena Rani-petitioner appeared as her own witness.

The respondents/applicants examined the witnesses to prove that they were earlier residing at Rajinder Nagar Tehsil and District Fatehgarh Sahib and after sale of their joint family property measuring 104 kanals 16 marlas in favour of Harvinder Singh etc. vide sale deed dated 01.02.2006, they moved to village Kotla, Police Station Mahilpur District Hoshiarpur by purchasing the land in dispute sold by its erstwhile owner Sh. Harvinder Singh through his brother and an Attorney. As has been noticed hereinbefore, one of the applicants Rajwant Kaur stepped into the witness box to reiterate the version set up in the application for setting aside ex parte proceedings as well as judgment and decree. The witnesses were cross examined at length by counsel representing the petitioner. Counsel for the petitioner has failed to point out any materials elicited in cross examination of the witnesses to create a doubt in the story propounded by the respondents/applicants or to prove that the applicants were residing at the given address of Fatehgarh Sahib even at the time when the summons through registered cover were sent to them at the address of Rajinder Nagar Tehsil and District Fatehgarh Sahib. The witnesses examined by the respondent/applicants have consistently deposed that the respondents/applicants left Rajinder Nagar Tehsil and District Fatehgarh Sahib after sale of family property measuring 104 Kanals 16 marlas including their residential accommodation in Fatehgarh Sahib. The sole testimony of the petitioner is not at all sufficient to rebut the evidence adduced by the respondents/applicants to establish their plea that they were never tendered the summons sent through registered cover, therefore, there was no occasion for them to refuse to accept the notice issued by the Court. As the respondents/applicants have successfully established their plea that they were no longer residing in Rajinder Nagar

Tehsil and District Fatehgarh Sahib in the year 2007, contention raised by counsel for the petitioner with regard to presumption of correctness being available to an endorsement made by a postal employee that summons sent through registered cover were refused to be accepted by the addressee gets sufficiently rebutted. The petitioner, therefore, cannot derive any advantage to her contentions from the judgment in **Gujarat Electricity Board and another's case** (supra). Examined from another angle, the basic dispute qua the land in question is between the petitioner and her minor son on one hand and Harvinder Singh, husband of petitioner Sheena Rani on the other hand. There is nothing on record suggestive of the fact that respondent No.2 to 6, vendees of land from Harvinder Singh, had any connection with Harvinder Singh prior to sale in question. It is not plea of the petitioner that Smt. Labh Kaur and others got the land transferred in their name with an intent to cause prejudice to rights of the petitioner and her minor son or colluded with Harvinder Singh to prepare a sham transaction. Respondents No.2 to 6 purchased the land in question for sale consideration of Rs.40 lakhs and they sold their land measuring 104 kanals 16 marlas vide sale deed dated 01.02.2006 proved on record. It is difficult to accept to reason that had respondents No.2 to 6 gained knowledge of pendency of the suit, they would have opted to stay away from the proceedings at the cost of sale deed executed in their favour being set aside by the Court at the behest of the petitioner and her son. The plea of the petitioner that respondents No.2 to 6 did not intentionally cause appearance despite knowledge of pendency of the suit is against prudent human conduct, sufficient to substantiate plea of the respondents/applicants that they did not have knowledge of pendency of the proceedings or passing of ex parte judgment and decree at any time prior to the alleged date of

knowledge. This apart, counsel for the petitioner has not pointed out any materials on record to establish plea of the petitioner that the respondents had knowledge of pendency of the suit much less they were duly served to reckon limitation from the date of ex parte decree. Under the circumstances, contention of the petitioner that application filed by the respondents/applicants for setting aside the ex parte judgment and decree dated 05.11.2011 is barred by limitation is not meritorious and rightly rejected by the trial Court. In this view of the matter, I do not find any patent error in the impugned order warranting intervention in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

SEPTEMBER 19, 2017
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no