

In the High Court of Punjab and Haryana at Chandigarh

CR-7508 of 2017
Date of Decision:1.11.2017

Tara Singh (deceased) through his LR

---Petitioner

vs.

Swaran Singh (deceased)through his LRs

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Harchand Singh Batth, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 6.10.2017 (Annexure P-5) passed by the Civil Judge (Junior Division), Patti whereby application under Order 9 Rule 7 read with Section 151 of the Code of Civil Procedure (in short “the Code”) for setting aside ex parte order dated 20.1.2016 (Annexure P-2) has been dismissed.

Counsel for the petitioner has submitted that Sarwan Singh (since deceased) now represented by his Lrs filed a suit for possession by way of redemption of mortgage against Tara Singh, predecessor in interest of the petitioner and others. During pendency of the suit, Tara Singh passed away and application was filed on behalf of the respondents/plaintiffs for

impleading legal representatives of deceased Tara Singh and the same was allowed and accordingly the petitioner alongwith her sister Paramjit Kaur, Dalbir Singh and Jasbir Singh sons of Tara Singh were brought on record. It is argued that in the memo of parties/amended head note, the petitioner is described to be resident of village Gharyala Tehsil Patti District Tarn Taran when as a matter of fact the petitioner is residing in her in-laws house since her marriage in March 2005. It is argued with vehemence that as the petitioner did not receive any notice issued for service of legal representatives of Tara Singh nor munadi with regard to her service was effected at her latest address in village Gaange Khurd Post Office Pacca Kale Wala, Tehsil Jalalabad, District Fazilka, the impugned order cannot be allowed to sustain and liable to be set aside by providing an opportunity to the petitioner to contest the suit from the stage, she was proceeded against ex parte by the trial court.

I have heard counsel for the petitioner, perused the paper book and records of CR No. 3614 of 2013 decided on July 24, 2015.

The learned trial court in the operative part of the impugned order, has noticed to the following effect:-

“Perusal of the file shows that order of application under Order 6 Rule 17 C.P.C. was passed by then learned Presiding Officer of this court on 21.5.2013 against which present applicant along with her brother Dalbir Singh and Jasbir Singh present defendants no. 1-C and 1-D appeared in revision application No. 3614 of 2013 before Honourable High court. Said revision has already been dismissed on 24.7.2015. Above said facts

show that present applicant Amarjit Kaur was well aware regarding proceedings of present case from the year 2013 but she kept mum for more than 04 years and made wait for her appearance in this case till final stage in present case. She has no independent right in suit land and is impleaded to pursue this case for her deceased father Tara Singh. Conduct of present applicant itself bars her from filing this application.”

Counsel for the petitioner has not disputed that Tara Singh since deceased filed the aforesaid revision petition before this Court to assail order dated 21.5.2013 passed by the trial court whereby application under order 6 Rule 17 of the Code for amendment of the plaint was allowed. During pendency of the said petition, Tara Singh passed away on 18.8.2013. Civil Misc. application Mo. 17540-CII of 2014 dated 22.8.2014 under Order 22 Rule 2 read with Section 151 of the Code for impleading legal representatives of deceased Tara Singh was filed through Sh. H.S.Batth, Advocate supported by an affidavit of Jasbir Singh, one of the legal representatives of Tara Singh. The application was allowed and all the four persons mentioned in para 4 of the application were ordered to be impleaded as legal representatives of deceased Tara Singh.

One of the legal representatives of Tara Singh namely Dalbir Singh caused appearance before the trial court and contested the proceedings in the suit. It is none of the plea of the petitioner in the instant application that she was not aware of pendency of the petition before the High Court decided on 24.7.2015 wherein she was impleaded as one of the legal representatives of deceased Tara Singh. It is also not the plea that she

is not on speaking or visiting terms with Dalbir Singh, her brother. Even this is not the plea that she is in possession of the suit property after death of Tara Singh. No such fact has been pleaded by the petitioner that Dalbir Singh has any interest adverse to that of the petitioner. In the given circumstances, it is difficult to accept plea of the petitioner that she was not aware of pendency of the suit at any time prior to filing of the instant application at the fag end of trial. I stand fortified in my observations from the fact that in para 2 of the application, she has pleaded that she came to know regarding pendency of the suit today from some reliable source in court complex, Patti. Had it been true that the petitioner came to know about pendency of the suit on the day of filing of the application, there was no reason for her not to disclose the said source of information. This fact alone is sufficient to conclude that plea of the petitioner with regard to knowledge of pendency of the suit is misleading and liable to be rejected. It appears to the court that as the suit reached the stage of culmination in a judgment wherein the respondent/plaintiff has claimed a decree for possession by way of redemption, with a view to delay conclusion of trial and help her brother, the petitioner filed the instant application with an ulterior motive to achieve.

This apart, admittedly, Tara Singh was pursuing the suit when he passed away. As per the settled position in law, it was for the legal representatives of deceased Tara Singh to come forward to be impleaded as his legal representatives to defend the proceedings. Even otherwise, the suit would have continued and decided on merits without bringing on record legal representatives of the deceased. Analyzed from any angle, the

petitioner has no case to seek indulgence of this Court 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.

(Rekha Mittal)
Judge

1.11.2017
paramjit

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