

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

CR-8865-2017

Date of decision: 16.12.2017

Swatantar Singh

...Petitioner

Versus

Smt. Paramjit Kaur and others

...Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Vinod S. Bhardwaj, Advocate,
for the petitioner.

Ritu Bahri, J.

Challenge in this petition is to the order dated 01.09.2017 (Annexure P-9) passed by the Additional District Judge, Ludhiana, whereby appeal filed by respondent No.1 against the order passed by the trial Court has been allowed.

Plaintiffs (including petitioner) have filed a suit for declaration to the effect that they are owners in possession of 1/3rd share in the suit land pursuant to the Will dated 24.05.1995 executed by their father, Tirlochan Singh. It has been further pleaded the Will dated 09.12.1999 alleged to be executed by Tirlochan Singh in favour of defendant-respondents, was forged and fabricated document. The suit was initially, contested by Paramjit Kaur, Harjit Kaur, Sarabjit Kaur and Sukhpal Kaur Brar (defendants). However, later on, they had chosen not to appear before the trial Court and were proceeded against exparte vide orders dated 03.05.2010 and 26.05.2010. Ultimately, the trial Court decreed the suit vide judgment

and decree dated 19.07.2010 (Annexure P-3). Thereafter, defendant No.2-Paramjit Kaur made an application under Order 9 Rule 13 CPC (Annexure P-4) for setting aside the exparte decree dated 19.07.2010. This application was dismissed by the trial Court vide its order dated 27.08.2015 (Annexure P-7) by observing that seven opportunities had been granted to the defendants to lead their evidence, but they failed to appear before the Court and thereafter, they were proceeded against exparte vide order dated 26.05.2010. Finally, a decree dated 19.07.2010 was passed. The ground taken by defendant No.2 for not leading the evidence was that her attorney had failed to communicate with regard to the proceedings in the civil suit. This argument was rejected by observing that sudden disappearance of the attorney cannot be said to be unintentional, rather the attorney had withdrawn on the asking of defendant No.2 herself. With these observations, the application was dismissed.

However, appeal against the said order, preferred by defendant No.2-Paramjit Kaur, has been allowed vide order dated 01.09.2017 (Annexure P-9).

Learned counsel for plaintiff-petitioner has argued that the present application under Order 9 Rule 13 CPC has only been filed by defendant No.2-Paramjit Kaur and the decree has been set aside qua all the defendants, who had not filed the appeal. He has further argued that after being proceeded against exparte vide order dated 26.05.2010, defendant No.2-Paramjit Kaur has changed her counsel and now she is seeking the trial to be re-opened. Therefore, her prayer for reopening of the case by allowing the application is not justified.

After examining this issue, the lower appellate Court has held that

defendant No.2 was in India in October, 2009 and thereafter, she had gone abroad in December, 2009. When she was proceeded against exparte, she was not in India and for the fault on the part of counsel, a party should not be made to suffer. On this ground, her application has been allowed.

Heard.

In the present case, the dispute is between real brother(s) and sister(s) with regard to the property left by their father. Defendant No.2 had left India in December, 2009. On account of lack of communication between her earlier counsel or attorney, she could not get proper information with regard to the proceedings of the trial. Ultimately, a decree had been passed against her. In this view of the matter, the appellate Court has rightly allowed the application filed by defendant No.2 for setting aside the exparte judgment and decree dated 19.07.2010, subject to costs of Rs.30,000/- to be paid to the plaintiffs and Rs.20,000/- to be deposited in Legal Aid Account. The trial Court has been directed to provide two substantive opportunities to defendant No.2-appellant to lead her evidence and thereafter, decide the suit afresh.

Having examined the impugned order, no illegality, much less perversity, has been found therein warranting interference by this Court.

Resultantly, finding no merits, present petition is dismissed. However, plaintiff-petitioner will have liberty to lead evidence in rebuttal in accordance with law.

16.12.2017
ajp

(RITU BAHRI)
JUDGE

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