

CR No.1894 of 2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CR No.1894 of 2017 (O&M)

Date of Decision : 14.12.2018

MANJIT SINGH @ MANJIT CHOHAN AND ANOTHER

....PETITIONERS

V/S

APINDER SINGH AND OTHERS

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Tribhawan Singla, Advocate for the petitioners.

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

Mr. Amit Dhawan, Advocate for respondent No.19.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 01.09.2016 as well as 27.11.2013 (Annexure P-3), whereby the application for restoration of the application under Order 9 Rule 13 for setting aside the *ex parte* judgment and decree dated 12.02.2009 (Annexure P-1) was dismissed.

Mr. Tribhawan Singla, learned counsel appearing on behalf of the petitioners submitted that the plaintiff had obtained an *ex parte* judgment and decree dated 12.02.2009, whereby he declared to be owner of the suit land, which was already purchased by the petitioners, who was not arrayed as a party. Being a third party, the application under Order 9 Rule 13 was dismissed in default on 27.11.2013. An application dated 24.04.2014 under Section 151 of the Code of Civil Procedure was submitted for restoration but the same has

also been dismissed. In fact, the father of petitioner No.1 was pursuing the matter though he died in 2012 could not pursue the application and there was no one to take care of the same. On acquiring the knowledge, petitioner No.1 came to the India, executed on record a GPA on 07.03.2014 in favour of Mohinder Pal to peruse the litigation. In such circumstances, the application was filed.

Mr. Harsh Bungar, learned counsel appearing on behalf of respondent No.1-plaintiff supported the impugned order by holding the application being barred by law of limitation as even if he take the acquisition of knowledge of the order dated 27.11.2013 (P-3), on the date of execution of GPA as 07.03.2014, application should have been filed upto 06.04.2014, therefore, rightly so the said application has been dismissed and thus urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties and appraised the paper book.

The facts as enumerated above are not in dispute. Petitioners are claiming to be co-sharer of the property by virtue of some registered documents and seriously effected by the *ex parte* judgment and decree dated 12.02.2009 conferring co-sharer in favour of the respondent-plaintiff. No doubt, the petitioner has not been diligent in pursuing the application submitted under Order 9 Rule 13 and approach appears to be *lackadaisical* and in order to advance justice, the Court should not have brought the technicalities in the way and focus on the adjudication of the application under Order 9 Rule 13 instead of rejecting the application for restoration. The order dated 27.11.2013 (P-3) as well as 01.09.2016 are set aside. The application under Order 9 Rule

13 is ordered to be restored, subject to payment of costs of Rs.50,000/- to the plaintiff-decreeholder.

The trial Court is directed to expedite the disposal of the application by affording (4-4) effective opportunities in support of the evidence in the application and decided the same within a period of eight months.

Allowed in the above terms.

**(AMIT RAWAL)
JUDGE**

December 14, 2018

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