

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3226 of 2016

Date of Decision: May 30, 2018

Kela Devi

...Petitioner

Versus

Sham Singh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr.Veneet Chaudhary, Advocate for
Mr.Subhash Chand, Advocate,
for the petitioner.

Mr.B.R.Rana, Advocate,
for respondent Nos.1 & 2.

AMIT RAWAL, J. (Oral)

Present revision is directed against the order dated 10.3.2016 (Annexure P-5), whereby the application submitted by petitioner-defendant No.1 for setting-aside the *ex-parte* order dated 12.3.2012 accompanied by an application seeking condonation of delay, has been dismissed.

Mr.Veneet Chaudhary, learned counsel appearing on behalf of petitioner-defendant No.1 submitted that the respondent-plaintiffs instituted the suit seeking declaration to the effect that they are owners in possession of the suit property with consequential relief of permanent injunction restraining the defendants from interfering into peaceful possession by arraying the following persons as defendants:-

1. *Kela Devi alleged widow of Sh.Mahi Pal Singh.*
2. *Pardeep*
3. *Mahinder Singh*
Both sons of Shri Bachan Singh S/o Sh.Karan Singh
4. *Smt.Shanti Wd/o Shri Vinod Kumar son of Shri Bachan*

Singh.

5. *Seema D/o Shri Vinod Kumar son of Shri Bachan Singh,
All residents of Village Khuda Kalan Tehsil & District
Ambala.”*

Petitioner is defendant No.1 in the aforementioned suit. Service of petitioner-defendant No.1, as per the zimni orders extracted in the revision petition, was effected through Mohinder Singh-defendant No.3 and the report is extracted herein below:-

“Report of Kela Devi

Respected Sir,

After visiting the spot a due inquiry was made about Smt.Kela Devi. Smt.Kela Devi was not found on spot however the service of summon was duly made after giving summon to his nephew Mohinder Pal with copy of plaint.

Signature of Mohinder Pal”

Petitioner-defendant No.1 already instituted a suit against Vinod Kumar, Pardeep and Mohinder Singh for declaration that she is owner in possession of 1/3rd share of the land belonging to late Karma Singh son of Darab Singh measuring 48 kanals 10 marlas, i.e., the land in dispute, which was decreed by the trial Court vide judgment and decree dated 13.5.2006 and affirmed by the Lower Appellate Court vide judgment and decree dated 24.8.2007 (Annexure P-1), therefore, it cannot be believed that Mohinder Pal had deemed authority of Kela Devi to accept the service of notice on her behalf. All these factors have not been looked into by the trial Court resulting into infirmity and illegality.

Per contra, Mr.B.R.Rana, learned counsel for respondent Nos.1 and 2 submitted that the application was wholly belated, for, it was filed after four years. The petitioner was watching the proceedings and intentionally moved the application belatedly. Plaintiffs were not party in

the earlier litigation, reference of which has been made by them and, thus, urged this Court for affirming the findings by dismissing the revision petition.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of the learned counsel for the petitioner, for, as per the report of the Process Server, the summons were not received by the plaintiffs, but by Mohinder Singh with whom the plaintiffs were already having a litigation, which is evident from the perusal of the judgment Annexure P-1, wherein, Mohinder Singh defendant No.3 was appellant No.3 in the appeal filed against the judgment and decree dated 13.5.2006. For the sake of brevity, memo of parties of the civil appeal reads as under:-

“Civil Appeal No.120 of 2006

Date of Institution 14.06.2006

Date of Decision 24.08.2007

1. Vinod Kumar since deceased now represented by his legal heirs:-

a. Shanti wife of late Vinod Kumar,

b. Seema alias Baby minor daughter of Vinod Kumar, minor through her mother, natural guardian and next friend Shmt.Shanti wife of late Vinod Kumar.

c. Smt.Sunehri Devi, aged 68 years mother of Vinod Kumar,

2. Pardeep aged 38 years,

3. Mohinder Singh, aged 35 years,

All residents of Village Khuda Kalan, Tehsil and District Ambala.

...Appellants

Vs.

Kela Devi wife of late Mahi Pal Singh, resident of Village Khudda Kalan, Tehsil and District Ambala.

...Respondents.”

This fact had not been looked into by the trial Court and, therefore, in my view, it is a gross illegality and infirmity, for, the application for setting-aside the *ex-parte* judgment was also accompanied by an application seeking condonation of delay. In my view, the petitioner-defendant No.1 was bonafidely prevented to present the case and defend the suit filed by Sham Singh and others. It has been brought to the notice of this Court that the suit is still pending, for, while issuing notice of motion, this Court had directed the trial Court to adjourn the hearing beyond the date fixed by this Court.

As an upshot of aforementioned observations, the impugned order is set-aside. Application of petitioner-defendant No.1 for joining in the suit filed by Sham Singh and others as defendant No.1 is allowed. She is permitted to file written statement within a period of one month from the date of receipt of certified copy of this order. Thereafter, the plaintiffs shall file rejoinder, if any and the trial Court shall make an endeavour to expedite the disposal of the suit as early as possible.

Revision petition stands disposed of.

May 30, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No