

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3318 of 2014
Date of Decision.06.03.2018

Gejo

.....Petitioner

Vs

Mehar Singh and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Atul Gaur, Advocate for
Mr. Sumeet Goel, Advocate
for the petitioner.

Mr. Prateek Mahajan, Advocate
for respondent Nos.1 to 9.

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AMIT RAWAL J.(ORAL)

The present revision petition is directed against the order dated 23.4.2014 whereby the application dated 11.03.2014 for setting aside the ex parte proceedings against petitioner-defendant No.20 has been dismissed.

Mr. Atul Gaur for Sumeet Goel, learned counsel appearing on behalf of the petitioner submitted that respondent Nos.1 to 9-plaintiffs instituted the suit for redemption of mortgage and correction of the jamabandi and permanent injunction against 27 defendants. The plaintiffs intentionally and deliberately with a view to play mischief gave wrong address of the petitioner in the plaint fully knowing that the petitioner was not resident of village Gobindgarh, District Ambala and in this process, procured false report regarding the service of the petitioner by serving upon Gurdev Singh-defendant No.27 i.e. her brother. However, defendant No.27 was himself proceeded ex parte. On gaining knowledge of the ex parte proceedings, the application dated 11.03.2014 was moved but the same has erroneously been dismissed.

He further stated that the petitioner had never issued any general

power of attorney in favour of defendant No.27, therefore, there was not need to effect service upon defendant No.20 through defendant No.27. Valuable right involved in the present case is affected, which would result into irreparable loss and injury in case the ex parte proceedings are not set aside.

Mr. Prateek Mahajan, learned counsel appearing for respondent Nos.1 to 9 submitted that the application was gross abuse of the process of the law as the defendants are intentionally and deliberately delaying the adjudication of the suit. Earlier Bhagwani Devi and Santosh Devi moved an application under Order 1 Rule 10 CPC on the premise that the mortgagee rights had been transferred in their favour and therefore, they were necessary and proper parties. The said application was dismissed and the revision petition preferred before this Court challenging the aforementioned order was also dismissed. Thereafter, defendant Nos.16 to 19, who are none else but sisters of petitioner-defendant No.20 moved an application for setting aside the ex parte proceedings but the same had been dismissed vide order dated 5.3.2014. It is only thereafter the present application dated 11.03.2014 was moved. It is not believable that all the sisters were not having the knowledge of the pendency of the suit. No irreparable loss and injury would be caused owing to the transfer of mortgagee rights, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Gaur. In the aforementioned suit, the petitioner-defendant No.20 was proceeded ex parte on 14.12.2009. Munadi was duly effected on defendant No.20 on 14.12.2009 and when nobody appeared, she was proceeded ex parte. In the previous order of 05.03.2014 whereby the application on behalf

mentioned that defendant No.27 was general power of attorney of defendant No.1 to 26 and service was effected upon him. When he did not appear, the Court proceeded to effect service through Munadi. It was just a ploy to linger on the adjudication of the suit by adopting all possible means. First of all, the petitioner and other sisters watched the proceedings in respect of application moved on behalf of Bhagwani Devi and Santosh Devi which was dismissed. Thereafter, other sisters i.e. defendant Nos.16 to 19 moved the application for setting aside the ex parte proceedings, which also resulted into dismissal. It is only thereafter, the present application was filed in March, 2014. No explanation has come forward whether the petitioner-defendant No.20 was having any knowledge of the proceedings or not. It is very difficult to digest and believe, much less, comprehend that all the sisters were not on talking terms and did not know about the proceedings. Even if the plea taken in the application is to be believed, the application was wholly belated, for, the application is bereft of explanation for moving the same along with application moved by defendant Nos.16 to 19 for setting aside the ex parte proceedings. All these facts have been taken care, much less, noted by the Court below.

In view of the aforementioned, I do not find any illegality and perversity in the order passed by the trial Court and the same cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 06, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No