

116/249

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-412-2017 (O&M)
Date of decision : 19.01.2018

Jagtar Singh

..... Petitioner

Versus

Mukhtiar Singh (deceased)
through LRs and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Kewal Krishan, Advocate for
Mr. Premjit Kalia, Advocate for the petitioner.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

CM-542-CII-2018

For the reasons stated in the application, judgment and decree dated 26.2.2002, passed by learned Additional Civil Judge, Sr. Division, Ajnala, (Annexure P-1) is taken on record.

Application stands disposed of.

CR-421-2017

Impugned in the present revision petition is the order dated 18.5.2016 passed by learned Additional District Judge, Amritsar, affirming the order dated 23.8.2014, passed by learned Civil Judge (Junior Division), Ajnala, vide which an application filed under Order 9 Rule 13 CPC read with Section 151, for setting aside the ex-parte judgment and decree dated 26.2.2002 passed by learned Civil Judge (Senior Judge), Ajnala, was dismissed.

Briefly stated that Mukhtiar Singh (deceased, now represented by his LRs) filed a suit against Harbhajan Singh and Balbir Singh, defendants No. 1 and 2, respectively, for declaration to the effect that he is joint owner in possession of land measuring 18 kanals 9 marlas i.e., half share of total land 36 kanal 18 marlas. He also claimed permanent injunction against defendant No. 2-Balbir Singh. The suit was ex-parte decreed on 26.2.2002.

Present petitioner- Jagtar Singh claimed that he had purchased the suit property in the year 2001 from one Major Singh, who has further purchased the same from Harbhajan Singh-defendant No. 1. The suit was filed in the year 1995 and present petitioner -Jagtar Singh claimed to have purchased the property in the year 2001. After the passing of the decree on 26.2.2002, he filed the application under Order 9 Rule 13 read with Section 151 CPC for setting aside the ex-parte decree on 24.7.2004 i.e. after a gap of 2 years 5 months, claiming that he had no knowledge about the pendency of the suit. Thereafter, learned trial Court framed the issues and held that the aforesaid judgment and decree cannot be set aside.

After hearing learned counsel for the petitioner, I am of the view that since the present petitioner purchased the property during the pendency of the litigation, therefore, Rule of *lis pendence* will apply and the decree passed against the original vendor will be binding upon him. It was his risk to purchase the property under litigation.

Learned counsel for the petitioner further contends that he was not aware about the pendency of the suit. I am of the view that if some fraud had been committed upon the present petitioner by the vendor, he can

always sue them for refund of the sale consideration and damages. The aforesaid judgment and decree dated 26.2.2002, passed by learned Civil Judge (Senior Judge), Ajnala cannot be set aside at his behest.

In view of the above, I do not find any illegality or irregularity in the order dated 18.5.2016 passed by learned Additional District Judge, Amritsar affirming the order dated 23.8.2014, passed by learned Civil Judge (Junior Division), Ajnala.

Dismissed.

(KULDIP SINGH)
JUDGE

19.01.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No