

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

C.R. No.5084 of 2016

Date of Decision.29.05.2018

Gurmeet Kaur and another

...Petitioners

Vs

Prem Singh (since deceased) through LRs and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Inderjeet Singh, Advocate
for the petitioners.

Mr. G.S. Sullar, Advocate
for respondent No.1.

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AMIT RAWAL J.(ORAL)

The revision petition is directed against the order dated 22.07.2016 passed by the Civil Judge (Junior Division), Naraingarh whereby misc. application bearing No.17/2012 titled as Gurmeet Kaur and others Vs. Prem Singh and others” for setting aside the ex parte decree dated 31.05.2002 has been allowed.

The petitioner-plaintiff (since deceased) being represented through his legal heirs instituted the suit for possession by way of specific performance of agreement to sell dated 29.03.1996 in respect of suit property described therein by arraying Prem Singh his brother as defendant.

In the aforementioned suit, the defendant did not appear despite having received summon and ex parte judgment and decree came to be passed on 31.05.2002. The legal representatives of Prem Singh filed the application for setting aside the ex parte judgment and decree dated 31.05.2002 in the year 2012 immediately after they received summon in the execution application of the aforementioned

judgment and decree on the premise that deceased-Prem Singh was never served and the service was procured by the plaintiff in connivance with the process serving agency. Even address given in the suit was not correct, thus, the service report of 15.05.1999 was managed one. The process server did not get the identification done from an independent person. Prem Singh was permanent resident of village Lakhnaur Saheb, Tehsil and District, Ambala whereas the service had been procured by giving address as Prem Singh Naraingarhwale (Ramgariha Sikh), Village Lakhnaur, P.O. Jalbera, Teshil and District Ambala. The plaintiff managed to move an application dated 24.05.1999 for setting aside the ex parte judgment and decree on behalf of Prem Singh accompanied by an affidavit, which was dismissed in default. In fact, it was a complete fraud played by the plaintiff, for, he did not seek execution for a period of 11 years as he kept the aforementioned judgment and decree secret for all this period, despite attending marriage and other ceremonies being brother of Prem Singh.

The aforementioned application was contested by the petitioners-plaintiffs by filing reply (Annexure P-11).

On the basis of aforementioned pleadings, the trial Court framed the issues. Both the parties examined witnesses in respect of their respective stands and on the basis of the evidence brought on record, the trial Court allowed the application.

Mr. Inderjeet Singh, learned counsel appearing on behalf of the petitioners-plaintiffs submitted that the finding of the trial Court that Prem Singh was not identified by the process server is neither here nor there, for, Prem Singh did not dispute his signature on the

acknowledgment. Even the application for setting aside the ex parte judgment and decree was accompanied by an affidavit containing the signatures of Prem Singh. Prem Singh was a mute spectator watching the proceeding but did not take any steps. Moreover, 10 years have gone by but the application for setting aside the ex parte judgment and decree was filed only after the application was moved for execution of the decree. During the course of hearing, shown copy of the vakalatnama filed in the civil suit through the counsel, accompanied in the application seeking setting aside of the ex parte proceedings for the purpose of comparing the same on the acknowledgment on the back of the summons to prove that signatures are of the same person, thus, urges this Court for setting aside the order under challenge as the finding rendered by the trial Court is not only erroneous but perverse.

On the other hand, Mr. G.S. Sullar, learned counsel appearing on behalf of the respondent-defendant submitted that with the naked eye it can be seen that the signature on the acknowledgment *vis-a-vis* the vakalatnama did not tally. No explanation came forth of not giving correct address of defendant, Prem Singh as he was not stranger to the family being brother. He was attending all the marriage ceremonies but did not disclose the ex parte judgment and decree. The knowledge of the decree was acquired only when the execution application was filed in the year 2011, 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. Inderjeet Singh, for, this Court while noticing the signature of Prem Singh in Urdu on vakalatnama and acknowledgment

on the summons found that they are not of the same person. The signatures on the vakalatnama are shaky and there are strong impressions. This exercise has been undertaken by me as per the provisions of Section 45 of the Indian Evidence Act.

There is another aspect of the matter. The process server did not get Prem Singh identified from any person of the locality, thus, it remained a mystery whether summon was really served upon Prem Singh or he was impersonated by some one else. No harm and prejudice would be caused to the plaintiff in contesting the case on merits, for, no explanation has come forth for not seeking execution of the aforementioned judgment and decree for 11 years. This Court while issuing notice of motion stayed the operation of the impugned order, thus, the trial in the suit owing to the order passed by this Court was not proceeded.

For the reasons aforementioned, I do not find any illegality and perversity in the order under challenge and the same cannot be said to be passed without jurisdiction. Keeping in view the fact that the suit was filed long time, while upholding the order under challenge and dismissing the revision petition, I deem it appropriate to issue directions to the trial Court to dispose of the suit as expeditiously as possible in accordance with law.

(AMIT RAWAL)
JUDGE

May 29, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No