

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4947 of 2006 (O/M)
Date of decision : 4.4.2018

Kulwant Singh Aulakh

..... Petitioner

Versus

Bachan Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. J.S. Dahiya, Advocate, for petitioner.

Mr. M.S. Bedi, Senior Advocate, with,
Ms. Shubreet Kaur, Advocate,
for respondent No. 1.

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 ?

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KULDIP SINGH J. (ORAL)

Impugned in present revision is judgment dated 9.1.2006 (Annexure-P-2), passed by the learned Additional District Judge, Gurdaspur, affirming the order dated 28.1.2003 (Annexure-P-1), passed by the learned Civil Judge (Senior Division), Gurdaspur, vide which an application filed by present petitioner, namely, Kulwant Singh Aulakh, under Order IX Rule 13 CPC, 1908, for setting aside judgment and decree dated 28.9.1998, was dismissed.

It comes out that one Bachan Singh had instituted a suit for possession by way of specific performance of agreement of sale dated 24.12.1991 on 8.5.1997 against Roor Singh, son of Munsha Singh and three brothers Darshan Singh, Kulwant Singh, Baldev Singh, and Kuldip Singh son of Swaran Singh. From the judgment, it is apparent that defendant No. 2 did not appear despite service and was proceeded against ex parte.

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However, defendant No. 1 appeared and contested the suit. Consequently, as a result of trial, suit was decreed, vide judgment and decree dated 28.9.1998. Now, present petitioner Kulwant Singh Aulakh has filed an application under Order IX Rule 13 CPC, 1908, for setting aside the said judgment and decree stating that he is a resident of England and was not properly served. It was further pleaded that he has come to know about ex parte decree only on 10.7.2000 when his attorney Ram Singh informed him about the decree on the occasion of birth of grandson of Ram Singh. Thereafter, he obtained copy of order and filed application. The application was contested by plaintiff-respondent stating that it is time barred. The averments made in the application were denied.

From the pleadings, following issues were framed :-

1. Whether there are sufficient grounds to set aside the ex parte decree dated 28.9.1998 in suit titled as Kulwant Singh Vs. Swaran Singh ?
OPA

2. Relief.

Before the trial Court, applicant failed to lead any evidence and consequently, his evidence was closed by orders and as a result thereof, application was dismissed. Present petitioner preferred an appeal against said order which was decided by the learned Additional District Judge, Gurdaspur. It has been observed that Ram Singh had appeared in examination in chief, but he did not appear for cross examination. Therefore, lower appellate Court held that in absence of any evidence, it cannot be said that averments made in application are proved. Consequently, appeal was dismissed.

The learned counsel for petitioner has argued that infact on the

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basis of agreement of sale dated 26.8.1992, present applicant-petitioner has purchased suit property on 24.5.1993 and had been cultivating the land. It is further stated that vendor colluded with Bachan Singh and prior agreement of sale dated 24.12.1991 was created. A legal notice was allegedly served on 3.4.1997. A suit for specific performance was filed which was contested by defendant No. 1 and consequently, suit was decreed. In this way, fraud has been committed upon the Court.

I am of the view that facts alleged in the application cannot be presumed. An opportunity was given to present petitioner to lead evidence to prove the averments made in the application for setting aside ex parte judgment and decree. However, he failed to lead any evidence. It has been further contended that Ram Singh, attorney of petitioner had fallen ill and later on died. It comes out that application was filed on 1.8.2000 and was decided on 28.1.2003. Therefore, it was not decided hurriedly. Ram Singh attorney of petitioner died on 24.10.2004 i.e. one year and nine months after decision of application and during the pendency of appeal. There is nothing on file to show that Ram Singh was ill when evidence was being recorded before the trial Court. Therefore, merely on the basis of arguments, things cannot be presumed in the way these are sought to be projected.

The learned counsel for petitioner has produced the authority of this Court in *Iqbal Singh Versus Jagmal Singh*, (2017) 1 ICC 1027.

I am of the view that in present case, an opportunity was given to petitioner to lead evidence, but he failed to lead any evidence. Therefore, without any evidence, the Court cannot presume the averments made in the application and fraud as claimed before this Court. It is to be noticed that

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three other brothers of present petitioner were also party to said suit. They are stated to have filed appeal against said judgment which was dismissed and now finally an RSA is stated to be pending before this Court. It is not case of petitioner that his three other brothers were also not served. They all belong to one family and even if one of the brother is residing abroad, service on other brothers is sufficient.

The learned counsel for petitioner has further argued that his other brothers were served by way of munadi which was not proper service.

I am of the view that in absence of any evidence, the fact whether munadi was not properly effected and there was no proper service, cannot be decided on surmises and conjunctures. There is no illegality or infirmity in impugned judgments, passed by both the Courts below. Consequently, revision is dismissed. Since main case is dismissed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

4.4.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No