

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

Sr. No.102

C.R. No.6932 of 2016 (O&M)

Date of decision: 16.08.2018

Janta Singh @ Gurjant Singh

....Petitioner

versus

Amrik Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Arun Bansal, Advocate
for the petitioner.

Mr. Binderjit Singh, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

Through the present petition challenge is made to the order dated 03.03.2014 passed by the Additional Civil Judge (Senior Division), Bathinda (for short – ‘the Trial Court’) dismissing the application filed by the petitioner under Order 9 Rule 13 CPC to set aside the ex parte judgment and decree dated 19.01.2010 passed against him. Order dated 12.09.2016 passed by the Additional District Judge, Bathinda (for short – ‘the Appellate Court’) through which the appeal filed by the petitioner against the aforesaid order passed by the Trial Court was dismissed has also been assailed.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the respondents filed a suit against the petitioner/defendant seeking therein specific performance of agreement to sell dated 04.01.2008. Relief of delivery of possession of the

suit property was also claimed. In the alternative relief of ₹ 44,00,000/- i.e. double the amount of earnest money paid by the respondents to the petitioner in pursuance to the aforesaid agreement alongwith interest was sought.

The Trial Court issued notice of the suit to the petitioner and after being convinced that the petitioner had refused to accept the summons initially ordered that the petitioner be proceeded against ex parte and thereafter, on the strength of the evidence led by the respondents passed an ex parte judgment and decree dated 19.01.2010 in the respondents' favour. When the respondents sought execution of the aforesaid ex parte judgment and decree, the petitioner appeared before the Executing Court. He then filed an application under Order 9 Rule 13 CPC seeking setting aside of the afore-referred ex parte judgment and decree dated 19.01.2010 which was dismissed by the Trial Court on 03.03.2014. The petitioner challenged such dismissal by way of an appeal which was also dismissed by the Appellate Court on 12.09.2016 giving him a cause to knock the doors of this Court through the present petition.

Learned counsel for the petitioner assails the orders impugned through the present petition on the ground that since the summons which had been sent to the petitioner were having the wrong name of his grand father he had rightly refused to accept the same and such refusal should had not been taken by the Trial Court as effective and proper service. He further submits that once after the petitioner had been proceeded against ex parte and the respondents had amended their suit, he was again required to be served therein.

Learned counsel for the respondents counters the above

submissions made on behalf of the petitioner by contending that in the revenue record the name of the grand father of the petitioner is the same as in the summons issued to the petitioner which he refused to accept. Even in another sale deed which the petitioner had executed with another party he had given the name of his grand father to be Bhag Singh which was the same name given in the summons issued to the petitioner in the respondents' suit which he refused to accept. Learned counsel for the respondents further submits that once the petitioner became aware of the pendency of a suit against him he should have made enquiries from the concerned court and since he did not do so it is only he who should suffer for his negligence.

In his deposition before the Trial Court, the petitioner admitted that about 1 ½ years ago he had received the summons in question but he refused to accept them because therein his grandfather's name had not been correctly stated. The summons in question were addressed to Janta Singh alias Gurjant Singh son of Darbara Singh son of Bhag Singh. AW-2 Janta Singh son of Jamita Singh, who was the petitioner's witness admitted in his cross-examination that the name of the petitioner's father is Darbara Singh. The revenue record in the form of jamabandi for the year 2008-09 as also the Khasra Girdawari for the period 2009/2010 till 2012/13 Ex. RX1 and Ex. RX2 which were produced and proved by the respondents clearly reveal the name of the father of the petitioner as Darbara Singh and the name of his grand father as Bhag Singh. The respondents further produced and proved on record of the trial Court a sale deed dated 07.03.2011 (Ex. R1), the photograph on which was admitted by the petitioner to be his, in which the petitioner's grand father's name was given as Bhag Singh. Thus, no merit is

found in the stand of the petitioner.

Even otherwise, once the summons had been sought to be served upon the petitioner wherein admittedly his and his father's name had been correctly mentioned and on such summon the name and title of the civil suit filed against him alongwith the name of the Court as also when such suit was listed for hearing was clearly mentioned, the petitioner, as a reasonable man was expected to at least make enquiries with regard to the subject matter referred to in the summons and not to sit at home to await passing of an ex parte decree against him. For such negligence on his part it is only he who should suffer.

The petitioner also did not examine the process server to prove his case and for that adverse inference can only be taken against him.

No other point was raised.

In view of the above, the concurrent findings arrived at both by the Trial Court as also the Appellate Court warrant no interference.

Dismissed.

(DEEPAK SIBAL)
JUDGE

August 16, 2018
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No