

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

CR No.7747 of 2018 (O&M)
Date of decision : 30.11.2018

Pawan and others

...Petitioners

Versus

Mamta Gupta and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. M.L. Sarin, Sr. Advocate with
Ms. Himani Sarin, Advocate for the petitioners.

ANIL KSHETARPAL, J.

Arguments were heard on 15.11.2018 and the judgment was reserved. Now the judgment is being released.

The question which needs consideration is whether High Court should interfere in exercise of its powers of Superintendents under Article 227 of the Constitution of India in an order passed by the learned trial Court permitting the respondents who are purchasers for valuable consideration, of course during the pendency of the suit, to contest the suit particularly when the original defendants have not chosen to contest the suit (since they were in the process of transferring the property in dispute) and, therefore, ex parte judgment passed by the Court is only after hearing the plaintiffs-petitioners.

The plaintiffs-petitioners are in the revision petition against

the order passed by the learned trial Court setting aside the ex parte decree dated 22.11.2005 and permitting the applicants who are subsequent purchasers for valuable consideration to contest the suit on merits.

Baldehy son of Khacheru had sold various pieces of land vide sale deeds dated 20.03.1992, 16.11.1994, 17.08.1995 and 15.02.1996 to defendant Nos.2 to 6. These sale deeds were challenged by the plaintiffs, who are sons of Baldehy, by filing a suit on 04.01.1999 by pleading that it is ancestral property and sale by Baldehy is without legal necessity.

No doubt, the defendants were served and at one point of time represented by the counsels, however, Baldehy who appeared in person also stopped appearing as also other defendants, resulting into ex parte decree passed by the Court on 22.05.2005. As many as four applications were filed under Order 9 Rule 13 CPC seeking setting aside of the ex parte decree. The applications were contested by the plaintiffs-petitioners herein. Learned trial Court dismissed one application filed by defendant No.3 who was duly served in the suit vide order dated 18.05.2018 whereas by a separate order, three applications were allowed. It may be noted here that defendant No.3 has already sold the property to Rishi Sood-respondent No.2 herein who had filed separate applications.

This Court has heard the learned Senior Counsel for the petitioners and with his able assistance gone through the paper book.

Learned counsel has submitted that the transferee pendente lite has no right to seek setting aside of the ex parte decree. He further

submitted that the application did not give sufficient reasons for condoning the delay in filing the applications and hence the order passed by the Court is not sustainable. While elaborating, he has submitted that the limitation has to be applied with all its rigours and while condoning the delay, the Court should not be liberal. He further submitted that learned Court while setting aside the decree has not given sufficient reasons to set aside the ex parte decree which are 'sine qua non' for allowing the applications. He further submitted that the applicants have not examined the original defendants would not be in position to prove that there was some sufficient cause for not appearing.

As regards first argument of the learned Senior Counsel for the petitioner, learned Senior Counsel has relied upon the judgment passed by Hon'ble the Supreme Court in the case of **Ram Parkash Aggarwal and another Vs. Gopi Krishan (Dead through LRs) and others, (2013) 11 SCC 296**. Although, he fairly, brought to the notice of this Court that there is a previous judgment of Hon'ble the Supreme Court, reported as **(2004) 2 SCC 601, Raj Kumar Vs. Sardari Lal and others** taking the contrary view. However, he submitted that the subsequent judgment passed by Hon'ble the Supreme Court should be followed.

A larger Bench of this Court in the case of **Indo Swiss Time Ltd Vs. Umrao, 1981 PLJ 189**, has held that if there is conflict in the law laid down in two judgments passed by Hon'ble the Supreme Court having Judges of equal strength, the Court is at liberty to follow the judgment

which is more near to the facts of the case. In the case of Ram Parkash Aggarwal (Supra), Hon'ble the Supreme Court was dealing with the proceedings under Section 18 of the Land Acquisition Act, 1894 in which the application was filed under Order 9 Rule 13 CPC. Hon'ble the Supreme Court was dealing with the entirely different fact situation, whereas in the case of Raj Kumar (Supra), Hon'ble the Supreme Court was dealing with the case of transferee pendente lite and it was held that the transferee pendente lite having stepped into the shoes of the original defendant is entitled to file an application under Order 9 Rule 13 CPC. The view of Hon'ble the Supreme Court in the case of Raj Kumar (Supra) has been followed in various judgments passed by this Court.

Hence, it is held that the applications filed by transferees pendente lite were maintainable. Learned trial Court has also relied upon the aforesaid judgment in the case of Raj Kumar (Supra) to hold that the application is maintainable.

As regards the question of knowledge and limitation, the Court has considered this aspect in detail and have held that the applications are within time from the date of knowledge.

Learned counsel for the petitioner could not point out any fact on the record to prove that the findings of the Court about the knowledge is erroneous.

As regards the next submission of the learned counsel for the petitioners that learned trial Court has not dealt with the issue of sufficiency of reasons for non appearance of the defendants (predecessors

of the applicants before the trial Court) the argument of the learned Senior counsel is no doubt correct. The order passed by the learned trial Court does not deal with the aforesaid aspect. However, this Court has to examine whether the suit filed by the plaintiffs challenging five different sale deeds executed by their father which have been set aside through ex parte judgment should be allowed to sustain without even granting opportunity to the persons who had purchased the property for valuable consideration on the basis of the registered sale deeds executed by the father of the plaintiffs. On the one hand, allowing the revision petition would result in depriving the applicants or their predecessor an opportunity to contest the suit as granted by the trial Court enabling the trial Court to decide the lis after hearing the parties whereas on the other hand if the revision is to be allowed, original defendants who did not choose to contest as they were in the process of transferring the property, and their subsequent vendees for valuable consideration lose their immovable properties purchased, on account of ex parte judgment.

It is well settled that power of Superintendents under Article 227 of the Constitution of India is to be exercised sparingly and in the interest of justice. Every technical error committed by the trial Court is not required to be corrected by the High Court. The jurisdiction of the High Court under Article 227 of the Constitution of India is for advancing the interest of justice and not for scruttling the rights of the purchasers for valuable consideration even opportunity to contest the suit. No one had chosen to contest the suit. A reading of the ex parte judgment

Annexure P-1 clearly establishes that the suit has been allowed merely by noticing that the suit property was inherited by Sh. Badley from his father. This prima facie fact does not appear to be sufficient to set aside various sale deeds. In the present case, it is considered appropriate that rather than going into the technicalities, this Court should refrain from interfering. If there is any merit in the claim made by the plaintiffs, they would succeed even after contest.

Keeping in view the fact that ex parte decree has been set aside, the trial Court is directed to decide the suit finally within a period of 1 year from the date of the receipt of copy of this order.

Any observation made by this Court while deciding the revision petition would not influence the Court while deciding the suit.

Revision petition is accordingly, disposed of.

All the pending miscellaneous applications, if any, are disposed of in view of the abovesaid judgment.

30.11.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No