

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

C.R. No.780 of 2018

Date of Decision.06.02.2018

Jaipal

.....Petitioner

Vs

Chander (since deceased) through LRs

....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kulvir Narwal, Advocate
for the petitioner.

AMIT RAWAL J.(ORAL)

The petitioner-defendant No.3 is aggrieved of the impugned orders (Annexure P-6 and P-8) whereby application for setting aside the ex parte judgment and decree dated 16.03.2002 has been dismissed.

Mr. Kulvir Narwal, learned counsel appearing on behalf of the petitioner submits that the respondents-plaintiffs, Chander, Daya Chand and Duli Chand, instituted a suit for declaration on the premise that defendant Nos.4 and 5 and father of defendant Nos.6 to 8 were the owners in possession of agricultural land as described in the plaint. Defendant No.4 had 5/40 share, defendant No.5 had the same share and Kirori father of defendant Nos.6 to 8 had 5/40 share. Defendant No.4 and 5 and father of defendant Nos.6 to 8 sold their respective land measuring 23 kanals 16 marlas out of entire land vide registered sale deed dated 8.6.1967 for consideration to the plaintiff by delivering the possession of the same.

The declaration was sought on the basis of ownership and permanent injunction restraining the defendants from interfering into peaceful possession over the suit land. The aforementioned judgment and

decree was passed ex parte on 16.03.2002 as all the defendants i.e.

defendant Nos.1 to 6 were proceeded ex parte. The petitioner was serving in the Army and posted at Maharashtra. The provisions of Order 5 Rule 28 CPC have been erroneously ignored and the ex parte proceedings have been initiated by causing a *munadi* i.e. by beating of drums in the local village where the petitioner was not residing, despite the report of summons before ordering *munadi* that the petitioner was serving in the Army. The application was moved on 03.01.2011, though the petitioner had come back from the Army after retirement in the year 2005 and started residing in the same village. The ex parte judgment and decree has seriously affected the interest of the petitioner and therefore, the application was moved but both the Courts below have erroneously dismissed the application on the ground of delay and laches, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioner and appraised the paper book. The judgment and decree as indicated above is regarding declaration of ownership on the basis of sale deed and restraint order against the petitioner-defendant No.3 and other co-defendants from interfering into the peaceful possession of the plaintiffs. This Court specifically raised a question to Mr. Narwal whether any ownership rights of the petitioner-defendant No.3 had been affected in view of the injunction which restrained him from interfering into the peaceful possession. However, during the proceedings before the Court below whereby issues were framed in the application under Order 9 Rule 13 CPC, no revenue record has been placed on record to establish that possession was with the petitioner-defendant No.3. Even no explanation has come forth for not moving the application from 2005 to 2011. There was a delay of six years

as the petitioner was aware that the respondents-plaintiffs are in cultivating possession being resident of the same village.

In my view, even if there has not been adherence to the provisions of Order 5 Rule 28 CPC but in view of the facts and circumstances as narrated above, setting aside the ex parte judgment and decree at this stage, would tantamount to create a situation which may go beyond the control of either of the parties and may result into vandalism, much less, putting the clock back.

In view of the aforementioned, the findings rendered by the Courts below, in my view, are perfectly legal and justified and do not call for interference. Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 06, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No