

In the High Court of Punjab and Haryana at Chandigarh

CR-8443 of 2015(O&M)
Date of Decision:25.1.2018

Sat Pal Guruwara and another

---Petitioners

vs.

Karamjit Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Abrol, Advocate
for the petitioners
Mr. Bhavyadeep Walia, Advocate
for respondent Nos. 2 and 3
None for respondent Nos. 4(i) to (iii)

Rekha Mittal, J.

CM No. 26255-CII of 2015

Prayer in this application is for bringing on record legal representatives of Sanjiv Kumar Guruwara (since deceased) respondent No. 4.

In view of averments made in the application and arguments advanced by counsel for the applicants, application is allowed and legal representatives of Sanjiv Kumar Guruwara, respondent No. 4 are allowed to be brought on record for the purpose of present lis only, subject to just exceptions.

Disposed of accordingly.

CR No. 8443 of 2015

Challenge in the present petition has been directed against

order dated 18.8.2015 passed by the Additional Civil Judge (Senior Division), Dera Bassi whereby application for restoration of the suit filed by the petitioners has been dismissed.

Counsel for the petitioners has submitted that the petitioners alongwith Sanjiv Kumar Guruwara (since deceased) filed a suit for declaration that plaintiff No. 1 is owner in possession of agricultural land measuring 3 bighas 12 biswas and a co-owner in possession to the extent of 1/3rd share in land measuring 6 bighas, detailed therein and laid challenge to General Power of Attorney No. 25/4 dated 14.8.2006 being forged and fictitious and sale deed No. 4420 dated 13.9.2006 executed on the basis of power of attorney is illegal, null and void and liable to be set aside.

The petitioners alongwith Sanjiv Kumar Guruwara appointed Sh. Surjan Singh Chatha son of Mohan Singh as their general attorney to manage their property as they belong to Jagdalpur, District Bastar, Chhattisgarh, thus, it was not possible for them to manage their land situated in village Baghora, Dera Bassi. Sh. Surjan Singh Chatha became greedy and took undue advantage of general power of attorney. He got registered false FIR No. 284 dated 18.9.2011 under Sections 406, 420 and 120-B of the Indian Penal Code at Police Station Zirakpur District Mohali against the petitioners alleging that the petitioners agreed to sell their land to him and he (Surjan Singh Chatha) paid total sale consideration of Rs. 60,00,000/- to the petitioners but the petitioners did not send him the jamabandi or the agreement to sell but ultimately with his efforts, agreement to sell dated 18.10.2007 was sent by the petitioners. The petitioners came to know about registration of FIR in the month of December 2013 and were

allowed bail in anticipation of arrest by the Additional Sessions Judge, SAS Nagar vide order dated 24.12.2013(Annexure P-3). It is further argued that as soon as in the month of April 2014, the petitioners came to know that civil suit filed by them through their attorney Sh. Surjan Singh Chatha has been dismissed for non-prosecution, they filed the instant application for setting aside order dated 18.11.2013 and restoration of the suit. It is argued with vehemence that as the attorney started acting against the petitioners by lodging an FIR and further permitted the suit filed through him to be dismissed for non-prosecution, in case the order impugned is allowed to sustain, it would lead to miscarriage of justice.

Another submission made by counsel is that technicality or procedural lapse should not be allowed to stand in the way of substantial justice more particularly in the circumstances that the petitioners have filed the suit on a plea that power of attorney dated 14.8.2006 is the result of forgery and fraud, therefore, sale deed executed on the basis thereof is liable to be set aside. The last submission made by counsel is that respondent Nos. 2 and 3 vendees under the sale deed would be able to retain their land in case the suit is not decided on merits.

Counsel representing respondent Nos. 2 and 3 has supported the impugned order with the plea that the petitioners are guilty of adopting dilatory tactics. The suit was earlier dismissed in default on 27.10.2010 but the same was restored. Again, suit was dismissed in default on 18.11.2013, sufficient to prove that the petitioners are not serious much less diligent in pursuing their remedy before the court. According to counsel, application filed by the petitioners has rightly been dismissed by the Court and the

respondents are entitled to compensatory costs.

I have heard counsel for the parties, perused the paper book particularly various annexures appended with the petition including the order impugned.

There is no dispute that the plaintiffs in the suit including Sanjiv Kumar Guruwara (since deceased) are residents of Jagdalpur, Chhattisgarh. The suit property is situated in village Baghora Dera Bassi. The plaintiffs are the sons of late Sh. Inder Raj Guruwara. They filed suit for declaration through their general attorney Sh. Surjan Singh Chatha son of Mohan Singh resident of House No. 201, Lohgarh Road, Zirakpur. The petitioners have placed on record the documents pertaining to lodging of FIR No. 284 dated 18.9.2011 by their attorney for offence punishable under Sections 406, 420 and 120-B of the Indian Penal Code registered at Police Station, Zirakpur and have also placed on record order passed by the Additional Sessions Judge, SAS Nagar Mohali with regard to grant of bail in anticipation of arrest in the said FIR. The suit was dismissed in default on 18.11.2013 though the attorney lodged criminal case in September 2011 but it becomes a fact that attorney of the petitioners started acting against interests of the principal. Since attorney of the petitioners lodged criminal case in September 2011 without knowledge of the petitioners, petitioners possibly could not get correct information from their attorney with regard to status of civil suit filed by them through him. In the circumstances, the petitioners cannot be condemned for their failure to pursue the suit diligently or the suit resulting in dismissal for non prosecution in November 2013.

The petitioners filed application dated 17.4.2014 for restoration of the suit. In para 3 of the application, it is averred that the applicants came to know about dismissal of the case now and they are filing the present application. The application is supported by an affidavit of one of the applicants namely Sat Pal Guruwara. The contesting respondent Nos. 2 and 3 filed reply to the application raising certain preliminary issues. On merits, in reply to para 3, there is no challenge to averments raised by the petitioners that they have come to know about dismissal of the case now and thus are filing the present application. As per the settled position in law, non-controverting an allegation in the pleadings specifically amounts to admission on the part of contesting party. The court below, while advertng to the question of limitation for filing application for restoration of the suit failed to consider that the contesting respondents have not challenged averments raised in para 3 with regard to knowledge of dismissal of the suit.

As has been rightly argued by counsel for the petitioners that technicalities and procedural lapse cannot be allowed to stand in the way of substantial justice unless there is materials on record to hold that a party has approached the court with uncleaned hands or with intention actuated with malice. In the case at hand, petitioners are the victims of their general attorney Sh. Surjan Singh Chatha having turned hostile who even lodged criminal proceedings against them. Under the circumstances, in my considered opinion, it is a fit case where the petitioners deserve indulgence, in exercise of discretionary jurisdiction, for restoration of the suit so that they can seek adjudication of their claim on merits. In this view of the

matter, order impugned cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed. The order impugned is set aside. The application for restoration of the suit is allowed. The suit titled “Sanjiv Kumar Guruwara and others vs. Karamjit Singh and others” is ordered to be restored to its original status and number for proceeding with the case in accordance with law. The petitioners shall be liable to pay costs of Rs. 20,000/- to respondent Nos. 2 and 3, to be shared equally. The petitioners shall deposit costs with the trial court within a period of 10 days from their appearance. The parties through their counsel are directed to appear before the trial court on 5.2.2018. As the suit pertaining to the year 2008 has been restored on Board of the trial court, the court shall put its best efforts to decide the case expeditiously preferably within a period of one year from the parties putting in appearance.

(Rekha Mittal)
Judge

Jan 25, 2018
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No