

CR No.8538 of 2016

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

CR No.8538 of 2016

Date of decision:17.04.2018

Jaskaran Bir Singh and another

... Petitioners

Vs.

Harpreet Singh and another

... Respondents

CR No.8541 of 2016

Shivdev Pal Kaur

... Petitioner

Vs.

Harpreet Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Sanjiv Gupta, Advocate
for the petitioners (in CR No.8538 of 2016).

Mr. Rakesh Gupta, Advocate
for the petitioner (in CR No.8541 of 21016).

Mr. Ashok Kumar Sharma, Advocate
for respondent No.1 (in both cases).

AMIT RAWAL J.

This order of mine shall dispose of two revision petitions bearing Nos.8538 and 8541 of 2016. The facts are being taken from CR No.8538 of 2016.

The petitioners are aggrieved of the impugned order dated 01.12.2016 (Annexure P-1), whereby, an application (Annexure P-2) for setting aside the ex parte order against LRs No.3 and 4 of deceased

Amritpreet Singh, has been dismissed.

Mr. Sanjiv Gupta, Advocate and Mr. Rakesh Gupta, Advocate appearing on behalf of the petitioners submitted that respondent-plaintiff instituted the suit seeking partition of the suit property. During the pendency of the suit, Amritpreet Singh died and the petitioners alongwith proforma respondent no.2 were impleaded as his legal heirs. The petitioner were not served personally so when they came to know about passing of the ex parte order dated 27.08.2014, moved an application (Annexure P-2) for setting aside the same vide which the petitioners had been proceeded against ex parte. The trial Court, vide impugned order dated 01.12.2016 (Annexure P-1) dismissed the application (Annexure P-2) as no service was effected upon the petitioners personally. It was held that they were served through their mother who undertook to appear on their behalf. Neither any copy of the plaint was sent. From the perusal of the record, it appeared that summons were sent jointly in the name of all four legal heirs, therefore, due procedure of law had not been resorted to. The finding of the trial Court in allowing the petitioners to join the proceedings of suit without filing the written statement, in fact, tantamount to taking away the valuable right to defend the suit, thus, would not be able to substantiate the case on merits. The petitioners undertake to file the written statement as and when the opportunity is granted and urged this Court for setting aside the order under challenge.

Mr. Ashok K. Sharma, learned counsel appearing on behalf of respondent No.1 submitted that order of the Court below is perfectly legal

and justified. No explanation has come forth in not appearing before the trial Court. It was adoption of delaying tactics and rightly so has been negated. Each and every day of non-appearance had gone un-explained. The applicants are none-else but the children of deceased/defendant no.1 and mother Shivdevpal Kaur was also proceeded against ex parte and thus, urged this Court for upholding the order under challenge.

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sanjiv Gupta, Advocate and Mr. Rakesh Gupta, Advocate.

The provisions of Order 9 Rule 7 of Code of Civil Procedure leave no manner of doubt that as and when the defendant at or before such hearing, appears and assigns good cause for his previous non-appearance, the Court may direct him subject to any terms and conditions to appear as if he had appeared on the day when the case was listed. By taking away the right in not filing the written statement has caused serious prejudice to the defendants as to whether the property could be partitioned or not or already partitioned, though in a suit for partition, all the co-sharers have equal interest. By cross-examining the plaintiffs' witnesses in the absence of evidence would be beyond pleadings. At the best, the Court could have imposed certain conditions for filing the written statement.

In order to avoid miscarriage of justice and advance justice to the parties to the lis, I deem it appropriate to modify the order under challenge and instead of allowing the petitioner-defendants to join the proceedings from the stage when the suit was pending, permit them to file

written statement within a period of one week from the date of receipt of certified copy of this order and replication, if any, within another one week thereafter and the Court shall proceed further to re-frame the issues, if necessary and decide the suit by affording 4-4 effective opportunities to each of the parties as expeditiously as possible subject to costs of ₹5,000/- each in both the cases to be paid the contesting respondent-plaintiff(s).

Revision petitions stand allowed.

(AMIT RAWAL)
JUDGE

April 17, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No