

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

C.R.No.977 of 2016

Karamjeet Kaur

...Petitioner

Versus

Jaswinder Singh and Ors.

....Respondents

AND

C.R.No.1004 of 2016

Karam Singh

...Petitioner

Versus

Jaswinder Singh and Ors.

....Respondents

Date of Order: 08.5.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. J.S. Dhaliwal, Advocate for
Mr. H.S. Brar, Advocate for the petitioner in CR
No.1004/2016.

Mr. Abhishek Bhardwaj, Advocate for
Mr. Balram Singh, Advocate for the petitioner in
CR No.977 of 2016.

Mr. B.S. Baath, Advocate for respondent No.1.

AMIT RAWAL, J (ORAL)

This common order of mine shall dispose of aforesaid two revision petitions since common questions of law and facts are involved in the same. The facts are being extracted from CR No.1004 of 2016.

Respondent-plaintiff/Jaswinder Singh instituted the suit for specific performance of the agreement to sell dated 07.2.2001 against Gulzar Singh but during the pendency of the suit, he died and his LRs i.e Mukhtiar Kaur (widow), Karam Singh, Jasbir Singh and Mohan Singh (sons) were impleaded as party.

Upon notice, defendants appeared and filed written statement

and thereafter the counsel for the defendants suffered a statement that he had no instructions, then the Court proceeded the defendants ex parte resulting into passing of ex parte judgment and decree dated 03.8.2010.

An application dated 23.11.2011 (P.2) under Order 9 Rule 13 CPC was filed by the defendant but vide the impugned order dated 20.5.2015 the same was dismissed. Appeal preferred against the same was also dismissed by the lower Appellate Court vide order dated 26.10.2015 (P.5).

Learned counsel for the petitioner submitted that the petitioner-Karam Singh being one of the LRs of Gulzar Singh was not summoned in any manner or mode of service, thus the decree passed by the trial Court at his back was not sustainable. He submitted that no harm and injury would be caused, for, it was incumbent upon the trial Court to issue notice to all the concerned parties, in case, the counsel had pleaded no Authority/Instructions. In support of his submissions, he relies upon judgments rendered by the Hon'ble Supreme Court in **Tahil Ram Issardas Sadarangani and others Vs. Ramchand Issardas Sadarangani and another** AIR 1993 Supreme Court 1182 and **Malkiat Singh and another Vs. Joginder Singh and others**, 1998(1) RCR (Civil) 277.

Learned counsel for the respondent submitted that the Court cannot remain mute spectator to the on-going proceedings once the counsel had made statement that all the LRs are not required to be impleaded. In support, he has relied upon a judgment of this Court reported as **Nirankar Dev Vs. Lala Sri Kishan Dass** 2005(3) RCR (Civil) 293 and prayed for dismissal of the revision petitions.

After hearing learned counsel for the parties and perusing the

paper book, I find that the courts below have committed illegality, for, both the courts below have not properly appreciated the legal proposition of law. Once the counsel representing the petitioner-Karam Singh being one of the legal heirs had pleaded no instructions, a notice was required to be sent to the petitioner as has been held by Hon'ble Supreme Court in **Tahil Ram's case (supra)**, para 4 of which reads as under:

“4. It is not disputed in the present case that on March 15, 1974 when Mr. Adhia, Advocate withdraw from the case, the petitioners were not present in Court. There is nothing on the record to show as to whether the petitioners had the notice of the hearing of the case on the day. We are of the view, when Mr. Adhia withdrew from the case, the interests of justice required that a fresh notice for actual date of hearing should have been sent to the parties. In any case in the facts and circumstances of this case we feel that the party in person was not at fault and as such should not be made to suffer.”

As regards the contention of the petitioner-Karamjeet Kaur in CR No.977 of 2016 that she was not impleaded, I am in agreement with the contention raised by learned counsel for the respondent as Division Bench of this Court has already held in **Sardara Singh and another v. Harbhajan Singh and others, AIR 1974 Punjab and Haryana 345** that it is not necessary to serve all legal heirs of the deceased respondent as their interest was fully protected by other LRs already on record. It was held that what has to be seen is whether the estate is effectively represented. It was held to the following effect:

“6. Mr. Jain, learned counsel for the appellants then argued that Harbhajan Singh, respondent No.1, is

dead and although his three sons, respondent Nos.2 to 4, who are also the transferees by reason of the exchange, are on record yet his two daughters though impleaded, have not been served. In our opinion, it is not necessary to serve them because their interests are fully protected by their three brothers who are already on record. It is not necessary in every case to bring all the legal representatives on record. What has to be seen is whether the estate is effectively represented. In this case it is so.”

In view of aforesaid, I am of the opinion that the plea of the petitioner-Karamjeet Kaur for not having been impleaded as LR of said Gulzar Singh is not maintainable, for, she was not a party and could not even move application under Order 9 Rule 13 CPC, thus the revision petition bearing No.1004 of 2016 is dismissed.

As regards, another revision filed by the petitioner-Karam Singh is concerned, for the reasons mentioned hereinabove, the same is allowed and the impugned ex parte judgment and decree is set aside subject to payment of Rs.25,000/- as costs to be paid to the respondent-plaintiff against receipt. The parties through their counsel are directed to appear before the trial Court where the petitioner shall file written statement within 15 days from the date of his appearance. Replication, if any, be filed by the plaintiff within 15 days thereafter. The trial Court shall decide the suit as expeditiously as possible, preferably within a period of 10 months after affording four effective opportunities each to respective parties.

May 08, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No