

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.8782 of 2017
Date of decision:17.01.2018

Major Singh

... Petitioner

Vs.

Raj Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.D.Bawa, Advocate
for the petitioner.

AMIT RAWAL J. (Oral)

The petitioner-plaintiff is aggrieved of the judgment and decree dated 08.09.2017 (Annexure P-13) rendered by the Lower Appellate Court, whereby, the application under Order 9 Rule 13 CPC moved by the defendant for setting aside the ex parte judgment and decree dated 24.04.2012, has been allowed.

Learned counsel for the petitioner submitted that the plaintiff instituted the civil suit seeking following relief:-

“Suit for mandatory injunction directing the defendant to hand over the vacant possession of the house bearing Plot No.22-23, min bearing khasra no.5246/5216 as shown in red colour in the site plan attached herewith, situated at Abadi Guru Arjan Dev Nagar, Tarn Taran Road, Sultanwind Sub Urban, Amritsar and the boundaries of which are as under:

North : Gulzar Singh

South : Sadhu Singh

East : Passage and

West : Property of Sh. Sudagar Singh.

And for recovery of ₹28,500 being the arrears of licence fees w.e.f. 9.8.2005 to 8.3.2007, at the rates of ₹1500/- per month.”

Service on the respondent-defendant was effected through munadi in the year 2008, but he had not appeared. In fact, the issues were framed in the application filed under Order 9 Rule 13 CPC for setting aside the ex parte judgment and decree dated 24.04.2012. He admitted that address given in the memo of parties is the same but the Lower Appellate Court negated the reports of Process Server being contradictory and unbelievable. The aforementioned statement/admission of the petitioner has not been noted by the Lower Appellate Court, therefore, there is gross illegality and perversity. The relief sought in the aforementioned suit was with regard to property in dispute which had been purchased by virtue of sale deed, therefore, the cause of action arose in the year 2007.

I have heard learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Bawa, for, the Lower Appellate Court, has examined the evidence and reports of the Process Server threadbare. It has been found that there was no witnesses to the reports which is essential requirement of law as neither Municipal Councilor of area or neighbourer has witnessed the

same. Nothing prevented the petitioner to get the report in accordance with law, yet he had been very callous in pursuing the suit, despite the defendant having been proceeded ex parte in the year 2008 and concluded the evidence in the year 2012, resulting into passing of the ex parte judgment and decree dated 24.04.2012. The application aforementioned was filed for setting aside the ex parte judgment and decree, ibid. The reports of the process servers as noticed by the Lower Appellate Court have not only been found in accordance with law but actually, the defendant was never served. Had it been so, perhaps there would have been some force in the submissions of Mr. Bawa.

Since the application has been filed for setting aside the ex parte judgment and decree dated 24.04.2012, I deem it appropriate to issue direction to the trial Court to expedite its trial as expeditiously as possible.

With the aforementioned observations, while upholding the order under challenge, revision petition stands disposed of.

(AMIT RAWAL)
JUDGE

January 17, 2018
savita

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