

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8966 of 2017(O&M)

Date of Decision: 17.01.2018

Gurcharan Kaur & ors.

... Petitioners

Versus

Kuldeep Singh

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Gurcharan Dass, Advocate,
for the petitioners.

RAMENDRA JAIN, J.(Oral)

C.M. No.755-CII of 2018

Since the document which is sought to be placed on record as Annexure P-4 has already been discussed by both the Courts below. Therefore, there is no necessity of the same to be taken on record.

Accordingly, the application is dismissed.

CR No.8966 of 2017(O&M)

Through the instant petition, challenge has been laid to the order dated 10.11.2017 of the First Appellate Court affirming the order dated 24.02.2016 of the trial Court dismissing the application of the petitioners under Order 9 Rule 13 CPC.

Put pithily, one Wazir Singh had two sons namely Kuldeep Singh-plaintiff (respondent herein) and deceased Joginder Singh. During his life time Wazir Singh on 09.05.1989 got executed a registered sale deed in favour of his son respondent-Kuldeep Singh qua a two storeyed building bearing property No.167 to 171/9 situated at Subhash Bazar, Khanna, to which Wazir Singh laid challenge by filing a suit bearing No.542 of 15.06.1990 on the ground that the aforesaid sale deed dated 09.05.1989 was

a result of fraud and misrepresentation. Therefore, the same was liable to be set aside. The said suit of Wazir Singh impleading the petitioners as party being legal heirs of Joginder Singh and his other sons was dismissed on 21.11.1997. Consequently, the sale deed in favour of respondent-Kuldeep Singh was held as genuine and valid.

The petitioners preferred an appeal, which was accepted vide judgment and decree dated 14.02.2000, whereby the sale deed in favour of Kuldeep Singh-respondent was set aside. Resultantly, respondent-Kuldeep Singh approached this Court by way of Regular Second Appeal No.2562 of 2000, which was decided on 30.10.2013 in favour of Kuldeep Singh-respondent affirming the judgment of the trial Court dated 21.11.1997 while setting aside the judgment of the First Appellate Court.

The petitioners, thereafter approached the Apex Court by way of Special Leave Petition, but remained unsuccessful. Therefore, the judgment and decree dismissing the suit of Wazir Singh and declaring respondent-Kuldeep Singh as legal owner of the aforesaid house attained finality.

In the meanwhile, respondent-Kuldeep Singh filed a suit for possession against the petitioners which was stayed vide order dated 24.10.1998 by the trial Court on an application of the petitioners under Section 10 CPC. However, the same was restored upon dismissal of the Special Leave Petition of the petitioners and was decreed ex parte on 29.07.2015 directing the petitioners to hand over the vacant possession of the house in dispute to respondent-Kuldeep- Singh within 2 months from the date of decree.

The petitioners challenged the aforesaid ex parte judgment and decree dated 28.07.2015 by way of an application under Order 9 Rule 13

CPC urging that they were wrongly proceeded ex parte before passing of the same, but remained unsuccessful as their aforesaid application was dismissed by the trial Court vide order dated 24.02.2016.

Being aggrieved, the petitioners filed an appeal before the First Appellate Court, but there also, did not get any success as their appeal too was dismissed vide judgment dated 10.11.2017.

Learned counsel for the petitioners contends that the petitioners were wrongly proceeded ex parte on account of non-appearance of their counsel before the trial Court for which the petitioners were not at fault and thus, could not have been burdened by passing an ex parte judgment and decree against them. Both the Courts below have failed to appreciate that the petitioners have been non-suited on technical ground, without adhering to the principles of natural justice that nobody should be condemned unheard.

After giving thoughtful consideration to the submissions made by learned counsel for the petitioners, I find the instant petition completely devoid of any merit for the reason that before passing the impugned ex parte judgment and decree against the petitioners on 28.07.2015, they were proceeded ex parte on 22.01.2015, when none appeared on their behalf. The plea of the petitioners that their counsel could not appear on 22.07.2015 due to illness, has no legs to stand in view of the fact that no medical evidence was produced by the petitioners in this respect. Production of medical slip prescribing some tablets to learned counsel for the petitioners, whereby he was advised complete bed rest by any stretch of imagination cannot be treated as a valid ground for non-appearance of learned counsel for the petitioners. More so, it was bounden duty of the petitioners to pursue their case diligently for their own negligence, they cannot be permitted to blame their counsel. In

case, their counsel had not appeared, in that eventuality, it was for the petitioners to appear in person or through their attorney to pursue litigation on their behalf before the trial Court.

The First Appellate Court has also made observation that the claim of the respondent for possession has been upheld by this Court in a litigation proceeding by the predecessor-in-interest of the petitioners. Therefore, they have no case on merit also.

In view of discussion made above, the present revision petition being devoid of any merit fails and is dismissed.

17.01.2018
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(RAMENDRA JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>