

**229**

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

CR No. 1408 of 2017

Date of Decision: 29.04.2019

Bakhshish Singh

-Petitioner

Vs

Nand Lal and another

-Respondents

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Amaninder Singh Sekhon, Advocate,  
for the petitioner.

Mr. Arvind Rajotia, Advocate,  
for the respondents.

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**RAJ MOHAN SINGH, J. (ORAL)**

1. Petitioner has assailed the orders dated 18.01.2017 passed by Additional District Judge, Faridkot confirming and upholding the order dated 25.08.2015 passed by Civil Judge (Senior Division), Faridkot dismissing the application under Order 9 Rule 13 CPC.

2. Plaintiff filed a suit for possession by way of specific performance on the basis of agreement to sell dated 12.05.2005. The property involved in the suit was a defined property.

3. Defendant No.2-petitioner was served with the process of the Court on 22.10.2005. Thereafter, he was

proceeded against exparte vide order dated 31.10.2005. The suit was decreed exparte vide judgment and decree dated 07.08.2006. An application under Order 9 Rule 13 CPC came to be filed only on 07.05.2007 on the basis of knowledge and after inspection of the record by the Advocate of the petitioner on 04.05.2007.

4. In the application filed by the petitioner, twin grounds were taken for setting aside exparte judgment and decree dated 07.08.2006. First ground was to the effect that defendant No.1- Ranjit Singh i.e. brother of the petitioner got the thumb impression of the petitioner on the summons in connivance with the plaintiff. Impression was given that the petitioner was to make a compromise by returning his money which was borrowed by defendant No.1 from the plaintiff. Some documents were got thumb marked by the defendants including stamp papers. Secondly, petitioner pleaded that summons were received on 22.02.2007.

5. Mr. V.K. Monga, Advocate was engaged but due to shortage of funds, petitioner could not pay his fee and therefore, the Advocate could not inspect the record. Inspection was done only on 04.05.2007 and thereafter, the application was filed on 07.05.2007.

6. Factum of service of the petitioner has been proved

by the decree holder by examining the Process Server namely PW1 Vinod Kumar who has specifically deposed that the petitioner was duly served on 22.10.2005 in the original suit. The ground taken in the application under Order 9 Rule 13 CPC could not be proved by the petitioner by leading any evidence of fraud. Fraud has to be pleaded and proved like a criminal case.

7. Feeble attempt has been made on the strength of Annexures P5 and P6 to contend that infact defendant No.1 was not the owner of the property on the date of suffering statement in favour of the plaintiff.

8. Perusal of the aforesaid sale deeds (Annexures P5 and P6) would show that the description of the property does not tally with that of property involved in the agreement to sell dated 12.05.2005. Even the aforesaid sale instances are the instances of unregistered documents involving less than Rs.100/-.

9. Since the petitioner has not led any evidence of fraud in the application under Order 9 Rule 13 CPC despite an opportunity granted to him, after framing of issues, therefore, both the Courts below have dismissed the application on limitation as well as on merits.

10. There cannot be any exception to the findings recorded in the impugned order passed by the Courts below.

11. This revision petition is accordingly, dismissed.

29.04.2019  
*Jyoti Yadav*

**(RAJ MOHAN SINGH)**  
**JUDGE**

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No