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

CR-3329-2015 (O&M)

Date of decision : 27.05.2019

Jagdish Poonia (deceased) through LRs

... Petitioner

Versus

Arun and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Robin Singh, Advocate for
Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Rajiv Kataria, Advocate and
Ms. Richudeep Bajaj, Advocate
for respondent Nos.1 and 2.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the orders dated 07.04.2010 and 05.02.2015, whereby the application dated 20.11.2003, under Order 9 Rule 13 of the Code of Civil Procedure, for setting aside the *ex parte* order, judgment and decree dated 30.04.2002 and 23.07.2003, has been dismissed.

The plaintiff-Bhagirath (deceased through LRs), instituted a suit by arraying the petitioner Jagdish Poonia son of Shiv Lal Punia, by giving the address as House No.408 Sector 40, near New National Law College, Gurgaon, Tehsil and District Gurgaon, claiming following relief:-

"Suit for permanent injunction to the effect that the plaintiff is owner of plot No.1556 Sector 14-P, Hisar and the plaintiff has cancelled the General Power of Attorney, vide registered

document (Cancellation Deed) No.267 dated 08.10.2001, which was executed by the plaintiff in favour of defendant no.1, vide registered GPA No.148 dated 10.6.1996, therefore, the defendant No.1 has got no concern, title or interest in the plot of the plaintiff and therefore, the defendant No.1 be restrained from transferring the plot of the plaintiff and defendant No.2 be restrained from changing the record of owner of the disputed plot; on the basis of evidence both oral and documentary of every kind."

In pursuance to the aforementioned notice, the trial Court, on 22.04.2002 and 30.04.2002, passed the following order:-

"Order dated 22.04.2002

"Present: Shri Anil Bansal, counsel for the plaintiff.

The suit received by way of entrustment. It be checked and registered. Office report perused. The Ld. counsel for the plaintiff requested ad interim injunction restraining the defendants from alienating the suit property in any manner whatsoever. But before granting the injunction, I deem it proper to issue notice to the other party. Therefore, notice of the suit as well as injunction application be issued to the defendants for 30.04.2002, on filing of PF etc.

Order dated 30.04.2002

Present: Shri Anil Bansal, counsel for the plaintiff.

Ms. Usha Manda, counsel for defendant no.2.

None for defendant No.1.

Summons of defendant No.1 received back with a report that he refused to accept the summons. The report is supported by 1 witness. Therefore, the service is complete. The case called several times since morning. But none has turned up to appear on behalf of defendant No.1. It is already 3.15 pm. No further wait seems to be justified. Therefore, defendant No.1 is hereby proceeded ex parte. Adjournment request by Ld. counsel for the defendant No.2 for filing of written statement and reply.

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Therefore, written statement and reply be filed on 07.06.2002. However, keeping in view of the facts and circumstances of the case, defendant No.1 is hereby restrained from alienating the Plot in dispute in any manner and defendant No.2 is restrained from transferring the ownership of the Plot in dispute till that date."

On perusal of the aforementioned orders, simply on the refusal of the summons and the report of the Process Server, allegedly witnessed by one witness, *ex parte* proceedings were initiated, resulting into, *ex parte* judgment and decree *ibid*.

Mr. Robin Singh, learned counsel appearing on behalf of the petitioner submitted that the plaintiff had entered into an agreement dated 10.06.1996 by executing a General Power of Attorney dated 10.06.1996, in favour of his client, duly registered, and Will in favour of Jagdish Punia, his son, against the valuable consideration. The GPA empowered the petitioner to get the plot bearing No.1556, Sector 14 (P), Hisar, for transfer, but owing to the cancellation, on 03.06.1997, the aforementioned right could not be exercised. The aforementioned plot was restored under the orders of Hon'ble the Supreme Court, on 28.09.2001. The address given in the memo of parties of the suit was not correct as the agreement dated 10.06.1996 contained the address as Jagdish Punia son of Shiv Lal Punia, resident of Mallapur, Tehsil and District Hisar. The respondent-plaintiff was aware of the aforementioned address, but intentionally did not give the same, in fact, the intention was to seek the injunction. The simpliciter suit was *ex facie* not maintainable, as, it was a contract as per Section 202 of the Contract Act. The alleged witness, noticed in the order dated 30.04.2002, has not been examined. Both the Courts below, thus, have not only

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misdirected, but the impugned orders, are totally fallacious and liable to be set aside.

Per contra, Mr. Kataria, learned counsel appearing on behalf of respondent Nos.1 and 2, submitted that the petitioner had many other addresses. The address given in the memo of parties of the suit has not been denied by the petitioner, even the application was belated and was not within time frame, as the notice dated 15.10.2003, indicated the knowledge of *ex parte* decree dated 23.07.2003, whereas the application is dated 20.11.2003, therefore, it was beyond 30 days. Though, the application under Section 5 of the Limitation Act, has been filed, but was bereft of any *bona fide* absence, in fact, the petitioner had been playing hide and seek and was aware of the aforementioned proceedings, but did not come forward to contest the suit, thus, urges this Court for dismissal of the present revision petition with exemplary costs by upholding the impugned orders, under challenge.

I have heard learned counsel for the parties, appraised the paper book as well as the documents shown to this Court, during the course of hearing of the revision petition. The foundation of the controversy, in the present case, are the agreement and General Power of Attorney dated 10.06.1996. In both the documents, the address of the petitioner has been given as Jagdish Punia son of Shiv Lal Punia, Village and Post Office, Mallapur, Tehsil and District Hisar. Once the respondents-plaintiffs were aware of the aforementioned address, no explanation has come forth in the plaint or in the evidence of giving the other address, which was not supported by any documentary evidence, that the defendant/petitioner was resident of House No.408, Sector 40, near New National Law College,

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Gurgaon. The legal notice is dated 15.10.2003, whereas the application is dated 20.11.2003. Taking 30 (thirty) days from the date of knowledge, it was delayed by 5-6 days. In this regard, an application under Section 5 of the Limitation Act had already been filed. The petitioner has already placed on record Driving Licence, Ration Card, showing his address as Village Mallapur.

Though I do not delve upon the merit and demerit of the suit, but simpliciter suit for injunction, in view of the provisions of Section 202 of the Contract Act, was maintainable or not, would be the domain of the trial Court. Be that as it may, both the Courts below, in my view, have not taken into consideration all these factors, thus, the impugned orders, under challenge, are not sustainable and the same are hereby set aside. The application under Order 9 Rule 13 of CPC is allowed and the suit is ordered to be restored to its original number. The petitioner-defendant is granted 15 (fifteen) days' time to file the written statement or any miscellaneous application from the date of certified copy of this order and thereafter, 15 (fifteen) days for replication. Thereafter, the trial Court shall proceed with the trial, in accordance with law.

With the aforesaid observations, the present revision petition stands allowed.

27.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**