

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

Civil Revision No.3375 of 2015 (O&M)

Date of Decision: February 05, 2019

Rakesh Chander Misra & others

...Petitioners

Versus

Dharam Pal & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Prateek Sodhi, Advocate,
for the petitioners.

Mr. Ajaivir Singh, Advocate,
for respondent Nos.1 to 6.

AMIT RAWAL, J.

The present revision petition has been filed for setting-aside the order dated 22.01.2015 (Annexure P-1), whereby application filed under Section 151 CPC for restoration of Misc.Application No.9A of 2008, which was dismissed in default on 12.03.2009, has been dismissed.

Petitioner-plaintiffs filed the suit for declaration to the effect that they are owners in possession in equal shares of land measuring 22 kanals 17 marlas and for setting-aside the sale deed dated 04.01.2007 and three sale deeds of 09.01.2007 with consequential relief of injunction restraining the respondent-defendants from interfering into peaceful and lawful possession. It was alleged that the suit land was previously owned and possessed by the father of the plaintiffs, namely, Narotam Dev and after his death, was inherited by the plaintiffs in equal shares. The plaintiffs, being N.R.I., are living in England and used to come India and never

appointed defendant No.12 as their attorney. One Gandarav Sain Bhalla son of Vidya Parkash prepared a forged and fabricated power of attorney allegedly executed by the plaintiffs and also obtained registration from the office of Sub Registrar, Jalandhar and succeeded in executing the sale deeds under challenge.

Mr. Prateek Sodhi, learned counsel for the petitioner-plaintiffs submitted that the suit was filed on 16.05.2007, which was dismissed in default on 15.01.2008. An application for restoration along with affidavit of the Advocate was submitted on 14.02.2008, but unfortunately the application was also dismissed in default on 12.03.2009. The aforementioned order was challenged in the revision in this Court, which was dismissed on 22.02.2010 with liberty to move an application for restoration and accordingly the second application seeking restoration of the first application, dismissed in default, was submitted on 29.03.2010. The same has erroneously been dismissed on 22.01.2015. The absence of the plaintiffs was neither intentional nor willful, but for the reasons explained in Paras 8, 9 and 10 of the application. No harm and prejudice would be caused in case the impugned order is set-aside and the application for restoration of the suit is ordered to be restored subject to any conditions which this Court may deem fit.

Mr. Ajaivir Singh, learned counsel appearing on behalf of the respondents No.1 to 6 submitted that the petitioner-plaintiffs failed to place on record any material to show that they were not in India and could not pursue the application and suit. They were directed to file copy of passport. Having failed to adhere to the direction, there would be no truth in their plea made in the application, much less the absence of the counsel was also

intentional.

I have heard the learned counsel for the parties and appraised the paper book.

The application for recalling of the order dated 12.03.2009 filed on 01.05.2010 has been decided by the trial Court on 22.01.2015, i.e., after five years. On this short ground, the court below should not have passed a detailed order and laid focus on the first application seeking restoration of the suit which was dismissed in default on 15.01.2008. The whole purpose is to cut short the irony of the parties to the lis but not to keep the application or the litigation pending.

In order to prevent miscarriage of justice and to render justice, the impugned order dated 22.01.2015 is set-aside. The applications are allowed subject to payment of ₹ 30,000/-, which shall be a condition precedent. Consequently, the suit is restored to its original number.

Since the suit is of the year 2007, the trial Court is directed to decide the same as expeditiously as possible.

The parties, through their counsel, are directed to appear before the trial Court on 20.02.2019.

Revision petition stands allowed.

February 05, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No