

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.3343 of 2017 (O&M)
Date of Decision.13.05.2019

Rajesh (deceased) through LRs ...Petitioner
Vs

Balwan Singh (deceased) through LRs and others ..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr. Gopal Sharma, Advocate
for respondent No.1(b).

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AMIT RAWAL J.

The present revision petition is directed at the instance of the petitioner-plaintiff against the impugned order dated 31.01.2017 whereby objection of the defendants qua execution of the ex parte judgment and decree dated 30.07.2009 passed in Civil Suit No.946 of 2003 titled as 'Rajesh Vs. Balwan Singh and others' has been allowed.

As per the facts narrated in the objections, civil suit aforementioned was filed by Rajesh on the premise that Sharbho Devi executed a registered Will bearing Vasika No.308/3 dated 23.01.2001 bequeathing her entire share of movable and immovable property in his favour, defendant No.1 Balwan Singh and her two grandsons Mani Ram and Ashok sons of Jorawar in equal shares. Thereafter, defendant No.1 executed a Release Deed dated 28.1.2002 in favour of defendant No.2 and 3 of entire agricultural land, though he was having only 1/3rd share.

Defendants after having been served through ordinary process and munadi, proceeded ex parte. Defendants No.1 to 6 were

proceeded ex parte on 14.2.2005 whereas defendants No.7 to 8 on 29.07.2005. The Civil Court decreed the suit vide ex parte judgment and decree dated 30.07.2009 and execution application (Annexure P-3) was filed on 4.12.2012 wherein vide Ex.P4, objector Sunil Kumar, judgment debtor No.3 filed objection that he was born in March, 1992 and was 17 years old i.e. minor at the time of decree and at the time of filing of the application being 24 ½ years. He alleged that decree could not be passed without implementation of Order 32 Rule 3 and 3-A CPC.

On contest, the Executing Court accepted the objections.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioner submitted that on going through the contents of objections, there is no whisper with regard to fact that interest of the minor has been affected or the guardian did not protect his interest. Even otherwise, defendant No.1 had only 1/3rd share as per the Will of Sharbho Devi and the release deed impugned was regarding entire land. In support of aforementioned contention, relied upon judgment rendered by Full Bench of this Court in Amrik Singh Vs. Karnail Singh etc. 1974 PLR 744, Amir Bala and another Vs. Swaran Singh and others 2006(4) RCR (Civil) 75 and Rajinder Kumar Vs. Sanatam Dharam Mahabir Dal 1999(1) RCR (Civil) 713.

Per contra, Mr. Gopal Sharma, learned counsel appearing for respondent No.1(b) submitted that genesis of the judgment for setting aside the decree was reliance upon judgment rendered by this Court in Gurpreet Singh Vs. Chatterbhuj Goel 1991(2) RRR 504 whereby Division Bench of this Court categorically held that guardian, who acted for the minor is not clothed with requisite authority to act as

such. Even as per the amended provisions of Order 32 Rule 3 and 4 CPC as applicable while filing the suit, plaintiff is required to attach with the plaint list of relatives with their addressees, thus, suit against the minor was not maintainable and rightly so, the objections have been allowed. In support of contention, relied upon judgments passed by this Court in **Raj Kumar Vs. Rohtash 2010(3) PLR 187; Baldev Singh and others Vs. Sukhdev Singh and others 2006(3) RCR (Civil) 76,** thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book. The contents of the application (Annexure P-4) nowhere contends that by virtue of the decree, interest of the minor was prejudiced or any harm has been caused. It is a matter of record that at the time of decree, the age of the objector-defendant No.2 was 17 plus by taking his date of birth as referred to in the objection. The birth certificate and middle school certificate have been brought as Ex.O1 and O2 but this Court cannot remain oblivious of the fact that as per Article 60 of the Limitation Act, limitation to challenge decree by minor is three years from the date of attaining majority. No doubt Rule 3 and 4 of Order 32 CPC as applicable to Punjab and Haryana provided list of relatives but the tenor and mode and the intention behind the application should be kept in mind. Objections were filed in the year 2016 against the decree of July, 2009. The limitation for setting aside the ex parte judgment and decree on attaining the majority expired in March, 2013. The trial Court did not notice the aforementioned fact.

There is no doubt to the ratio decidendi culled out in **Amrik Singh's case** (supra) wherein in para 24, it has been held as under:-

“24. After going through the case law cited before me, I have come to the conclusion that each case must be settled on its own facts and it would not be appropriate to lay down any general rule. The crux of the matter is that it has to be seen whether the minor was effectively represented in the litigation. If he was, then the non-compliance with the provisions of Order 32, Rule 3, which are mandatory, would not render the decision void. But if the non-compliance has caused prejudice to the minor or he was not effectively represented, the decision will be void, i.e., the minor can either ignore it or avoid it. This approach is in consonance with justice because where the matter has been properly contested and no prejudice has been caused to the minor, it will be sheer injustice to the other side to re-open the matter again. Litigation is a very expensive affair and the general principle of law is that it should not be encouraged. In this view of the matter, so far as the facts of the present case are concerned, there can be no two opinions that the minors were effectively represented and no prejudice has been caused to them. Their interests were effectively safeguarded by their brothers, who were co-defendants with them and whose interests were identical. They contested the suit on all conceivable grounds. The learned counsel for the minors has been unable to bring to our notice any evidence or any contention which would enable us to hold that a wrong decree was obtained.”

In view of the aforementioned judgment, it has to be seen whether the minor was effectively represented in litigation or was there any prejudice. It has become a common practice amongst litigants to proceed ex parte first and then challenge the same by taking the benefit of minority. Even averment qua non-service in the

suit owing to incorrect address or defective service is wanting. All these factors have not been adhered to by the trial Court while allowing the objections.

In view of such circumstances, the order under challenge is set aside as suffering from illegality and infirmity. The objections are dismissed and accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

May 13, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No