

**CR No.3548 of 2018(O&M), CR Nos.3014 and 3017 of 2019
(O&M)**

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

Date of Decision: 04.10.2019

1. CR No.3548 of 2018(O&M)

Sukhwant Kaur and others**Petitioners**

Versus

Harpal Singh and others**Respondents**

2. CR No.3014 of 2019(O&M)

Sukhwant Kaur and others**Petitioners**

Versus

Harpal Singh and others**Respondents**

3. CR No.3017 of 2019(O&M)

Sukhwant Kaur and others**Petitioners**

Versus

Harpal Singh and others**Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

**Present:Ms. Promila Nain, Advocate
for the petitioners.**

**Mr. Jagjit Singh, Advocate
for respondent No.1.**

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.3548 of 2018 titled Sukhwant Kaur and others Vs. Harpal Singh and others, CR No.3014 of 2019 titled Sukhwant Kaur and others Vs. Harpal Singh and others and CR No.3017 of 2019 titled Sukhwant Kaur and others Vs. Harpal Singh and others are being disposed of. Common facts are being noticed.

[2]. In CR No.3548 of 2018, petitioners have assailed the order dated 11.01.2018 passed by Civil Judge (Junior Division), Panipat, vide which suit of plaintiffs/petitioners was dismissed against defendant No.2 under Order 9 Rule 2 CPC.

[3]. In CR Nos.3014 and 3017 of 2019, petitioners have laid challenge to the order dated 25.02.2019 passed by Civil Judge (Junior Division), Panipat vide which application for stay of proceedings was dismissed.

[4]. Three Civil Suits No.54 of 2013, 622 of 2013 and 2859 of 2013 (on transfer became RRT No.96 of 2016) are pending before the trial Court. Civil Suits No.54 and 622 of 2013 are fixed for rebuttal evidence and arguments. Civil Suit No.2859 of 2013 is at the initial stage. The validity of General Power of Attorney No.69/4 dated 24.04.1986 is the subject matter of all

the aforesaid suits. In Civil Suit No.2859 of 2013 (RRT No.96 of 2016) besides aforesaid General Power of Attorney No.69/4 dated 24.04.1986, General Power of Attorney No.223/4 dated 06.07.2000 executed by Harjinder Kaur in favour of respondent No.1 and consequent sale deed No.7463 dated 05.02.2001 executed by respondent No.1 in favour of respondent No.2 (Smt. Ravi Kanta) are also challenged.

[5]. Petitioners/plaintiffs filed a suit for possession of house No.291/3 situated in Old Municipality, Panipat on the ground that the house was shown in the name of Harjinder Kaur wife of late Sh. Kartar Singh mother of the plaintiff/petitioners, but the same was purchased from joint funds of joint family and Harjinder Kaur was not the absolute owner, rather the same was owned by joint family including the plaintiffs. Smt. Harjinder Kaur died on 27.05.2002, leaving behind the plaintiffs/petitioners as well as defendant No.1 as legal heirs, who have succeeded her estate including the house in question. Plaintiffs have inherited 4/5th share in the house in question being natural heirs of late Smt. Harjinder Kaur. They came to know in the month of August 2010 that defendant/respondent No.1 has transferred the house by way of sale deed No.7463 dated 05.02.2001 for consideration of Rs.1,50,000/- in favour of defendant/respondent No.2 on the basis of alleged General

Power of Attorney No.223/4 dated 06.07.2000. Earlier there was General Power of Attorney No.69/4 dated 24.04.1986. Defendant/respondent No.1 had already sold respective shares of the plaintiffs and late Smt. Harjinder Kaur vide different sale deeds. Both the General Power of Attorneys and the sale deed have been assailed in the suit, seeking decree for possession regarding 4/5th share in favour of the plaintiffs in respect of house, decree for partition in respect of 4/5th share by making a partition by metes and bounds, declaring the General Power of Attorneys to be null and void and not binding upon the plaintiffs regarding their shares in the suit house and for granting decree for permanent injunction, restraining defendant No.2 from alienating the suit property in any manner.

[6]. Respondent No.2 Smt. Ravi Kanta wife of Ashok Kumar was impleaded on the address of 325/3, Insar Chowk, Panipat. The aforesaid address was available in the document under challenge. Defendant No.2 could not be served despite making every positive endeavour by the petitioners. Firstly, the process was issued in India on the given address and thereafter, on the address of U.S. Though number of opportunities have been availed by the petitioners including process under Order 5 Rule 25 CPC, but ultimately the trial Court has passed the order dated 11.01.2018, dismissing the suit qua defendant No.2 under

Order 9 Rule 2 CPC on the premise that the plaintiffs were directed to take corrective action as required in the report dated 29.06.2017 annexed with the summons.

[7]. An application under Order 5 Rule 25 CPC was filed by the plaintiffs. The said application was decided by the trial Court vide order dated 17.10.2017 and the plaintiffs were directed to take corrective action as required in the report dated 29.06.2017 annexed with the summons. Plaintiffs could not comply with the said order despite availing four opportunities. Consequently, inaction on the part of the plaintiffs entailed in order dated 11.01.2018 passed by the trial Court, dismissing the suit of the plaintiffs against defendant No.2 under Order 9 Rule 2 CPC.

[8]. At this stage, without recording any factual matrix of the case, it would be relevant to peruse the requirements of Order 9 Rule 2 CPC.

[9]. The provision in terms of Order 9 Rule 2 CPC postulates that the suit can be dismissed where the summons are not served in consequence of plaintiffs failure to pay costs. Where on the day so fixed by the Court, it is found that the summon has not been served upon the defendant in consequence of failure of the plaintiff to pay the Court fee or postal charges, (if any), chargeable for such service or failure to present copies of the plaint as required under Rule 9 of Order 7

CPC, the Court may make an order that the suit be dismissed, provided that no such order shall be passed, if notwithstanding such failure the defendant attends the Court in person or by agent, when he is allowed to appear by agent on the date fixed for him to appear and answer.

[10]. In the instant case, numerous efforts were made by the plaintiffs before passing of the order dated 17.10.2017 passed by the trial Court when the application under Order 5 rule 25 CPC filed by the plaintiffs was allowed. Thereafter, the plaintiffs did not take corrective action as required in the report dated 29.06.2017 annexed with the summons despite four opportunities. Requirement of the report dated 29.06.2017 assumes significance in the present context.

[11]. Learned counsel for the petitioners referred to report dated 29.06.2017 conveyed to the plaintiffs on the subject matter of

“Your Request of: June 29, 2017
Service on: Ashok Kumar
Case Number: Cs/2859/2013”

The aforesaid request was returned for corrective action noted thereafter. ABC Legal Services, contracting agent for the Department of Justice, was pleaded to execute the request upon following re-submissions:-

“Request should be submitted on the “Request” form

prescribed by the Convention, executed in English or in French.”

“Request should be accompanied by a “Summary of Document to be served”, executed in English or in French.”

The aforesaid requirements were to be fulfilled by the plaintiffs for taking corrective action as contained in the report dated 29.06.2017 annexed with the summons.

[12]. Perusal of the subject matter of the aforesaid report would show that service was sought to be effected on Ashok Kumar in Civil Suit No.2859 of 2013. Ashok Kumar is the husband of respondent No.2 and has not been arrayed in the suit as party defendant. Owing to the aforesaid omission or irregularity, the needful could not be done. Secondly, the aforesaid requirements were faced by the petitioners for the first time and they could not appreciate import of the same being technical in nature. The compliance of the report was technical enough to prevent the plaintiffs from making the same in the required period where four opportunities were consumed by them.

[13]. The language of Order 9 Rule 2 CPC is suggestive of the fact that the provision can be resorted to where there is a failure on the part of the plaintiffs to pay the Court fee or postal charges, if any chargeable for such service or failure to present copies of the plaint as required under Order 7 Rule 9 CPC. The

said requirement if appreciated in conjunction with the requirement of report dated 29.06.2017, it can be seen that non-compliance of the requirement of report dated 29.06.2017 would not bring in-action squarely under the ambit of Order 9 Rule 2 CPC. Plaintiffs never failed to pay the Court fee or postal charges for the service of defendant/respondent No.2, rather the requirement as per report dated 29.06.2017 was to give request on request form prescribed by the convention executed in English or in French along with summary of documents to be served in English or in French. The aforesaid requirements were revolving around service of Ashok Kumar husband of defendant/respondent No.2 and not defendant No.2 herself.

[14]. Perusal of the record would show that petitioners have suffered on account of technical flow in the case where name of Ashok Kumar has appeared in the subject column where service was sought to be served upon him with the requirements as mentioned in the report.

[15]. After dismissal of the suit against defendant No.2, the trial Court has proceeded to frame issues vide the impugned order and the case has been fixed for evidence of the parties. Vide order dated 25.05.2018, trial Court was directed to adjourn the proceedings beyond the date fixed and interim order is still in operation.

[16]. In view of aforesaid patent facts on record, I deem it appropriate to grant one more opportunity to the plaintiffs/petitioners to take recourse to Order 5 Rule 25 CPC including the compliance of report dated 29.06.2017 in the name of defendant No.2 afresh in accordance with law on a date to be fixed by the trial Court.

[17]. So far as Civil Suit No.54 of 2013 and Civil Suit No.622 of 2013 are concerned, both the aforesaid suits have already reached the stage of rebuttal evidence and arguments. Parties in all the three suits are different and different properties are involved, therefore, common feature only in the shape of General Power of Attorney No.69 dated 24.04.1986 would not prevent the trial Court from deciding the aforesaid civil suits in accordance with law. In Civil Suit No.2859 of 2013, General Power of Attorney No.223/4 dated 06.07.2000, General Power of Attorney No.69/4 dated 24.04.1986 and sale deed are being assailed. The cause of action is richly different than the aforesaid two suits, therefore, it would be just and appropriate not to stay the trial of aforesaid two suits, however, the trial Court would proceed to decide the aforesaid suits in accordance with law and Civil Suit No.2859 of 2013 shall be proceeded only after grant of one effective opportunity to the plaintiffs/petitioners to comply with Order 5 Rule 25 CPC and report dated

29.06.2017 in the name of defendant No.2 in accordance with law.

[18]. These revision petitions are accordingly disposed of.

04.10.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No