

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5249 of 2018

Date of decision: 24.05.2019

Ishar Kaur

...Petitioner

versus

Mohinder Singh (since deceased) through L.Rs. & ors. ...Respondents

Coram: Hon'ble Mr. Justice B.S. Walia

Present: Mr. S.S. Momi, Advocate for the petitioner.

B.S. Walia, J.,

1. Revision petition has been filed under Article 227 of the Constitution of India praying for setting aside, order, Annexure P/1 dated 11.09.2014, passed by the learned Addl. Civil Judge (Senior Division), Kurukshetra dismissing the application filed by the petitioner for setting aside ex parte order dated 29.09.1998, ex parte judgment and decree dated 16.11.2010 as well as order Annexure P/2 dated 11.01.2018, passed by the learned Addl. District Judge, Kurukshetra, dismissing the appeal against order Annexure P/1.

2. Learned counsel contended that the courts below failed to take into account that service had not been effected on the petitioner due to wrong address given by respondent No.1/plaintiff and that in the facts and circumstances of the case, the ex-parte order dated 29.09.1998, ex parte judgment and decree dated 16.11.2000, order Annexure P/1 dated 11.09.2014 dismissing the application under Order 9 Rule 13 CPC as well as order Annexure P/2 dated 11.01.2018 dismissing the appeal, consequentially, the

ex-parte proceedings and ex parte judgment and decree were liable to be set aside.

3. Brief facts of the case leading to the revision petition are that respondent No.1 filed a suit for declaration with consequential relief of permanent injunction against defendant No.6, defendant Nos.1 to 5, 7 & 8 i.e. petitioners and respondent Nos.2 to 8, inter-alia claiming to be owner of land comprised in Khewat No.196/177, Khatoni No.234, Rect. No.86, Khasra No.1 (7-7), vide jamabandi for the year 1990-91, situated at village Salpani Kalan, Tehsil Thanesar, District Kurukshetra (hereinafter referred to as the 'suit property'), on the basis of sale deed dated 24.12.1982 and praying that entries of the revenue record standing in the name of defendant Nos.1 to 6 to the extent of 117/147 shares be declared to be null and void and not binding on his rights. Respondent No.1 also prayed for a direction to respondent Nos.7 and 8 to substitute his name in place of respondent Nos.1 to 6 in the ownership column of the revenue record besides granting a permanent injunction restraining respondent Nos.1 to 6 from alienating the suit property or dispossessing him from the same in any manner.

4. Respondent Nos.7 and 8 put in appearance and filed joint written statement while respondent No.6, Banta Singh was given up as unnecessary on 10.10.1997. Despite service by way of *munadi*, defendant Nos.2, 3, and 6 i.e. petitioner herein did not appear and were proceeded ex parte on 29.09.1998. Defendant No. 4 having died was represented by her legal heirs i.e. defendant Nos. 1 to 3. Thus, for all intents and purposes, the suit was contested by respondent Nos.7 and 8 only.

5. The civil suit filed by respondent No.1 was decreed vide judgment and decree dated 16.11.2000, holding him to be owner of the suit

property as also that entries in the revenue record standing in the names of defendants No.1 to 4 and 6 i.e. respondent Nos.2 to 5 and petitioner in respect of the suit property were wrong. Accordingly, respondent Nos.7 and 8 i.e. defendant Nos.7 and 8 herein were directed to substitute the name of respondent No.1/plaintiff in place of defendant Nos.1 to 4 and 6. Respondent Nos.2 to 5 besides petitioner were restrained from selling the suit property or dispossessing respondent No.1 from the suit property forcibly and illegally.

6. After approximately 10 years i.e. on 24.07.2010, the petitioner filed application dated 23.07.2010 through her son Shamsher Singh whom she appointed as her GPA, vide GPA No.50 dated 01.07.2010 for setting aside ex parte order dated 29.09.1998 and ex parte judgment and decree dated 16.11.2000 on the plea that she came to know about the ex parte proceedings and consequent judgment and decree only on 21.04.2010, in the process of evidence led in an application for setting aside ex parte proceedings in Civil Suit No.441 of 2008, in case titled as Mohinder Singh and other vs Gurcharan Singh and others, pending in the Court of Mr. Amarinder Sharma, the then learned Civil Judge (Junior Division), Kurukshetra, that in said civil suit, respondent No.1 succeeded in getting ex parte proceedings against the petitioner by giving her wrong address but said ex parte proceedings were set aside vide order dated 12.05.2010. On coming to know about the ex parte proceedings and consequent judgment and decree dated 16.11.2000, the petitioner made inquiry through her GPA, collected relevant documents and thereafter filed an application for setting aside ex parte proceedings as well as judgment along with application for condonation of delay, while pleading that respondent No.1 had given her wrong address so as to defeat her lawful right's and interest, that she was residing with her family at village Garant

Datpur, Tehsil Gaula, District Lakhimpur Khiri (UP) since the year 1982-83 and used to visit village Salpani Kalan off and on for getting her suit property cultivated by giving it on batai/theke to different persons, that summons were never served upon her at her residential address in UP and despite the correct address being to the knowledge of respondent No.1, he had intentionally given her wrong address and that she had never refused to accept summon's.

7. On notice, respondent No.1 filed reply *inter-alia* pleading that the application was hopelessly time barred, that petitioner6 had concealed true and material facts from the Court as there were other cases pending between the parties in respect of the suit property and the petitioner had contested the said cases through counsel and judgment and decree dated 16.11.2000 had been referred to in said cases, the petitioner had full knowledge of said judgment and decree since long, that although in the application she had stated that she came to know about the judgment and decree on 21.04.2010, yet the same was referred to in Civil Suit No.441 of 2001 and copies thereof were produced/placed on record of said civil suit in the year 2003, petitioner in said civil suit on 28.08.2007 through her counsel after verifying the file of said case, moved an application for setting aside ex parte proceedings, whereupon respondent No.1 filed a reply to the application on 05.01.2008 and in that reply also, he referred to judgment and decree dated 16.11.2000, that copy of reply was supplied to the petitioner on 05.01.2008 itself, therefore, the application after expiry of two years and seven months was barred by limitation and liable to be dismissed as such.

8. Issues were framed by the learned Addl. Civil Judge (Senior Division), Kurukshetra, vide order dated 08.11.2011. Learned trial Court after hearing the parties, dismissed the application under Order 9 Rule 13 CPC

filed by the petitioner vide order dated 11.09.2014, whereupon the petitioner filed an appeal, which was also dismissed by the learned Addl. District Judge, Kuruksehtra, vide order dated 11.01.2018.

9. I have considered the submissions of learned counsel for the petitioner and perused the case file. Admittedly, defendant Nos.1 to 3 and 6 i.e. respondent No.2 to 4 and petitioner were served in the suit by way of *munadi* but they chose not to contest the suit. Claim of the petitioner that she was not properly and validly served in the suit as she was living in Uttar Pradesh and the suit property was being managed by her by giving it on batai / theka to different persons does not appear to be correct as the sale deed Ex.R1 dated 01.08.2007 reflects her to be resident of village Salpani Kala, Tehsil Thanesar, District Kurukshetra. Besides, it is very strange and unbelievable that her close relatives i.e. defendant Nos.1 to 4 i.e. respondent Nos.2 to 5 did not inform her about the munadi effected against her in the said suit. Said respondents are her relatives. While defendant No.4 i.e. respondent No.4 is her real sister in law, defendant No.1 i.e. respondent No.2 is her real nephew. Therefore, the stand that she had no knowledge of the pendency of the suit and the munadi against her was not properly and validly effected, does not appear to be correct. In the facts and circumstances of the case, the evidence produced by petitioner, does not reflect that she did not have knowledge of the pendency of the suit as also of the munadi effected against her. Besides deposition of RW-1, Rajinder Singh establishes that munadi was validly effected against the petitioner. Moreover, as per the deposition of RW-3 Bawa Singh and RW-4 Arjan Singh as well as petitioner herself, it is evident that the petitioner was a regular visitor at village Salpani Kalan, Tehsil Thanesar, District Kurukshetra.

10. However, what is most relevant and which goes against the petitioner is that Civil Suit No.441 of 2008 was instituted on 16.07.2001 by respondent No.1 etc. against defendant No.1 to 4 and 6 i.e. respondent Nos.2 to 5 besides the petitioner. The petitioner was proceeded ex parte in said civil suit. However, on an application moved by her, ex parte proceedings against her in said civil suit were set aside. Stand of the petitioner that she came to know about the ex parte proceedings and judgment and decree dated 16.11.2000 on 21.04.20100 is belied from the documents on record. A perusal of the case file reveals that respondent No.1 filed reply dated 05.01.2008 to the application of the petitioner for setting aside of ex parte proceedings in Civil Suit No.441 of 2008. Paragraph No.2 of said reply is reproduced as under:-

“That the proceedings cannot be set aside at this belated stage. About 12 witnesses have already been examined by the plaintiff. The defendant No.4 has given herself her address at village Salpani Kalan in the sale deed Ex.P6 and P7, which have been executed by the applicant/defendant No.4 herself. Not only this earlier one case no.381/1998 was decided on 16.11.2000 filed by Mohinder Singh against Gurcharan Singh etc. and Smt. Ishar Kaur the present application of the same land and the applicant has not appeared in that case also address in that case is also at village Salpani Kalan, Tehsil Thanesar, District Kuruksehtra and the same was decided ex parte against the present applicant. Not only this, one petition case filed by Gurcharan Singh against Bawa Singh and Smt. Ishar Kaur, present applicant before the Court of A.C. IInd Grade/Tehsildar, Thanesar on 08.06.2000 in

respect of the same land and address of the present applicant is also given of village Salpani Kalan by the defendants No.1 to 3 of this case. If the ex parte proceedings are not set aside, then 12 witnesses have already been examined, will have to summon again. The present applicant is the real sister of father of the defendants No.1 to 3 and she is in the knowledge of the suit from the very beginning but did not appear. Hence, the present application is liable to be dismissed with heavy costs.”

11. Perusal of contents of above reply dated 05.01.2008 reveals that it was specifically mentioned that judgment and decree dated 16.11.2000 was passed against the petitioner in civil suit No.381 of 1988. However, the petitioner did not do anything in respect thereto till filing application for setting aside ex parte judgment and decree dated 16.11.2000 on 24.07.2010. Once that be so, the contention that the petitioner came to know about the ex parte judgment and decree dated 16.11.2000 only on 21.04.2010 is contrary to the record and cannot be accepted. Rather despite reply to her application for setting aside ex parte proceedings in civil suit No.441 of 2008 having been filed on 05.01.2008, the petitioner kept on sleeping for more than two years. Besides judgment and decree in question was passed on 16.11.2000. As such, close to two decades had elapsed since the date of passing of the judgment and decree. Consequentially, in the facts and circumstances of the case, the petitioner cannot be said to have explained the reasons for not filing the application within the period of limitation despite coming to know about the ex parte judgment and decree on 05.01.2008. Having failed to establish sufficient cause for not filing the application under Order 9 Rule 13 CPC within period of limitation despite coming to know about the said judgment

and decree dated 16.11.2000 in the year 2008 and that too without explaining the delay in approaching the Court, no ground whatsoever is made out warranting setting aside of the impugned orders.

12. Accordingly, finding no infirmity in the impugned orders, the revision petition is dismissed in limine.

24.05.2019

rajesh.k.khurana

(B.S. Walia)

Judge

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No