

In the High Court for the States of Punjab and Haryana at Chandigarh

C.R. No. 6006 of 2015
Date of Decision: March 08, 2019

Sardara Ram

... Petitioner

Versus

Sumer Chand and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Manish Saini, Advocate,
for Mr. Ram Kumar Saini, Advocate,
for the petitioler.

None for respondent No.1

Mr. Viney Saini, Advocate,
for respondents no. 2, 3(i) to 3(iv), 3(vi) to 3(x), 4(i) to 4(iii)
and 5.

Amit Rawal, J. (Oral)

Present revision petition is directed against the impugned orders dated 19.11.2009 (Annexure P/2), 06.03.2013 (Annexure P/5) and 24.04.2015 (Annexure P/8) whereby the suit of the petitioner-plaintiff was dismissed in default and also the applications for restoration.

Petitioner-plaintiff sought the separate possession by way of partition the suit property. When the suit pending for defendants' evidence vide order dated 19.11.2009 was dismissed in default. An application for restoration of suit was submitted on 12.12.2009 and after opposition when it was pending for consideration, was dismissed in default on 06.03.2013.

Another application was moved for recalling of order on 06.07.2013 (Annexure P/6) assigning the reason, but it also rejected. In the application, it has been alleged that on 15.02.2013, the plaintiffs were present in the Court but the counsel for the plaintiffs, informed them the next date of hearing as 06.06.2013 and on that date, it transpired that its dismissal in default on 06.03.2013. It is submitted that trial Court should not have dismissed all these applications, but laid focus on the adjudication of the suit for partition.

Mr. Viney Saini, learned counsel, appearing on behalf of the respondents supported the impugned orders that the approach of the plaintiff had not been only tardy but cavalier. A person cannot be permitted to take the litigation so casual. The orders under challenge are sustainable as no explanation has come forth in not moving the application within reasonable time, thus, prays for dismissal of the revision petition with exemplary costs.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of learned counsel for the petitioner.

No doubt approach of the plaintiff has been lackadaisical, much less, not diligent in pursuing the litigation but in a suit for partition the parties to the lis are plaintiffs and defendants as their shares are to be determined. It is not a case where the plaintiffs did not lead evidence and the suit was dismissed under Order 17 Rule 3 CPC. In order to prevent miscarriage of justice, I deem it appropriate to recall all the orders and restore the suit. Orders dated 19.11.2009, 06.03.2013 and 24.04.2015 are hereby set aside. Suit is ordered to be restored to its original number and start from the stage from where it was dismissed, subject to costs of Rs.

20,000/- which shall be condition precedent.

Revision petition stands allowed accordingly.

March 08, 2019
vkd

(Amit Rawal)
Judge

Whether reasoned / speaking : Yes

Whether reportable : No