

CR-737-2017 (O&M)

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

**CR-737-2017 (O&M)
Date of decision : 08.01.2019**

Joga Singh

... Petitioner

Versus

Surinder Singh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ivan Singh Kohsa, Advocate
for the petitioner.

Mr. M.S. Batth, Advocate
for respondent no.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned orders, whereby an application under Order 9 Rule 13 of the Code of Civil Procedure, filed in the year 2006 against the *ex parte* judgment and decree dated 10.10.1998, in Civil Suit No.121 of 1995, has been dismissed.

Learned counsel for the petitioner-defendant No.1 submitted that the reports (Annexures P-4 and P-5) are totally opposite and contradictory to each other as Annexure P-4 was not witnessed by any witness, whereas Annexure P-5 revealed that address given in the suit was not correct. In such circumstances, the petitioner-defendant No.1 was proceeded *ex parte*. The respondent-plaintiff alleged that during the subsistence of the agreement to sell, in question, the petitioner-defendant No.1 executed two sale deeds in favour of defendant

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No.2 and obtained the *ex parte* judgment and decree. The knowledge of which was acquired on 03.05.2006. The Court below should not have dismissed the application in a very callous and casual manner, rather imposed certain conditions and fixed the time-line.

On the other hand, learned counsel for the respondent-plaintiff submitted that *ex parte* judgment and decree at the instance of the defendant No.2 has already been upheld by this Court in RSA No.1220 of 2005, decided on 23.01.2006. It would be a farcical exercise in ordering *de novo* trial as the petitioner-defendant No.1 was not having any right, interest and title in the property. The petitioner was having knowledge, which fact has been proved through the testimony of AW-5 as he had been casting the vote as and when the elections were held.

In rebuttal, learned counsel for the petitioner-defendant No.1 submitted that the trial Court has not passed any order proceeding the petitioner-defendant No.1 as *ex parte*.

I have heard learned counsel for the parties and appraised the paper book and of the view that the validity of the judgment and decree qua defendant No.2 is not in dispute, but the fact of the matter is that defendant No.1/petitioner has denied the execution of the agreement, much less, sale deed in favour of defendant No.2. Report (Annexure P-4) has not been witnessed by any witness. For the sake of brevity, the operative part of the report (Annexure P-4) reads as under:-

"It is humbly submitted that after reaching the spot Joga Singh was called but he remained present on the spot. He flatly refused to receive the summon."

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Whereas, Annexure P-5 did not acknowledge the refusal. For the sake of brevity, the operative part of the report (Annexure P-5) reads as under:-

"It is humbly submitted that after reaching the spot defendant was called. But he could not be found and thereafter it was revealed from the witnesses that Joga Singh has gone out without address. Smt. Mohinder Kaur w/o Nirmal Singh has gone to her relatives. Therefore the report is presented."

In the absence of any order by the trial Court, which has not been controverted by the counsel for the respondent-plaintiff, the petitioner-defendant No.1 could not have been proceeded *ex parte* in the manner and mode, as noticed above, as his right has seriously been prejudiced. All these factors have gone unnoticed, therefore, the impugned orders, under challenge, are preposterous, fallacious and perverse and the same are hereby set aside. The revision petition is allowed subject to the payment of ₹75,000/-, which shall be a condition precedent. The petitioner-defendant No.1 shall file the written statement within a period of 15 days from the date of appearance and after framing of the issues, the trial Court shall afford 3-3 effective opportunities to the parties and conclude the trial within a period of 10 months.

The parties or through their counsel are directed to appear before the trial Court on 28.02.2019.

08.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**

