

FAO-2296-2019 (O&M)

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

FAO-2296-2019 (O&M)

Date of decision: November 22, 2019

Gurdial Singh (deceased) through LR Appellant

Versus

Jasveer Kaur & ors. Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by: Mr. G.S.Bedi, Advocate
for the appellant.

Mr. Vikas Singh, Advocate
for the respondent.

Manjari Nehru Kaul, J.

The instant appeal has been filed by Veena claiming herself to be the legal representative and wife of Gurdial Singh (now deceased) against the order dated 17.01.2019 passed by Principal Judge, Family Court, Patiala vide which the ex parte judgment and decree dated 29.01.2009 passed in the divorce petition titled as “Gurdial Singh vs Jasveer Kaur” against the first wife-Jasveer Kaur (respondent No.1 herein) was set aside.

Few facts necessary for adjudication of the instant appeal as pleaded in the application under Order 9 Rule 13 read with Section 151 Code of Civil Procedure filed by respondent No.1 – Jasveer Kaur before the court below may be noticed.

Gurdial Singh (deceased) got married to respondent No.1-Jasveer Kaur (first wife) on 10.02.1990 at Ambala. Two children were born out of the

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said wedlock. Gurdial Singh expired in an accident on 26.07.2014. Thereafter respondent No.1-Jasveer Kaur applied for benefits of her husband, who was working as teacher in Govt. Modern School, Batrohan but instead she received a letter from his office dated 27.11.2014 along with a copy of plaint in a suit for declaration filed by Veena (appellant herein). On receipt of copy of the plaint, it came to the knowledge of respondent No.1-Jasveer Kaur that an ex parte decree of divorce had been passed against her. On inspection of the divorce petition, she learnt that her husband Gurdial Singh had obtained an ex parte decree of divorce dated 29.01.2009 by concealing material facts and playing a fraud upon her. In fact, respondent No.1-Jasveer Kaur claimed that she along with her husband Gurdial Singh and two children had been residing in her matrimonial home at village Khaira not only on the date of filing of divorce petition i.e. on 15.03.2008 but also on the date of passing of the order dated 13.08.2008 vide which she was ordered to be proceeded against ex parte and judgment and decree dated 29.01.2009. In fact, Gurdial Singh had made respondent No.1-Jasveer Kaur a nominee in an insurance policy, which was obtained by him during the pendency of the aforementioned divorce petition. He had also opened a joint bank account with respondent No.1 – Jasveer Kaur in State Bank of India, Ambala City on 27.08.2008. It was averred by respondent No.1-Jasveer Kaur that she had never been served in the divorce petition filed by Gurdial Singh, and Gurdial Singh had in fact never ever resided at House No.5, opposite 3216, Ward No.14, Rajpura Town, the address which was mentioned by him in his divorce petition nor had she ever resided at village Dhanora i.e. her address mentioned in the divorce petition. She further submitted that her signatures had once been obtained by her

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husband Gurdial Singh on some papers for opening a bank account as he wanted to purchase a car in her name by raising a loan from the bank. She claimed that she had signed the papers in good faith on the asking of her husband Gurdial Singh, who unfortunately misused the same. She further claimed that all along she had been residing along with her children in her matrimonial home at village Khaira during as well as after the lifetime of Gurdial Singh and had never ever resided at village Dhanora i.e. the address given in the divorce petition. She claimed that she had never received any summons in the divorce petition filed by her husband.

On being served, the parents of Gurdial Singh, who had been impleaded as respondents No.1 and 2 in the aforesaid application, appeared and submitted their reply wherein they admitted the averments contained in the application filed by respondent No.1-Jasveer Kaur, as being correct. However, thereafter both respondents No.1 and 2 did not appear and hence, were proceeded against ex parte vide order dated 24.05.2017. Veena (appellant herein), who had been impleaded as proforma respondent, filed a separate reply to the application. Besides taking preliminary objections qua the maintainability of the said application, she submitted that respondent No.1-Jasveer Kaur intentionally did not put in an appearance before the Court below even though she was aware of the divorce proceedings. It was further submitted that not only were the summons duly served upon Jasveer Kaur but she had also put in appearance in the Court through a counsel. Since Jasveer Kaur did not file any written statement, she was rightly proceeded against ex parte by the Family Court. Hence, it was submitted that no ground was made

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out to set aside the order dated 13.08.2008 and judgment and decree of divorce dated 29.01.2009.

From the pleadings, following issues were framed by the learned trial court:

1. Whether the applicant is entitled for setting aside ex parte judgment and decree dated 29.01.2009? OPA
2. Whether the present application is not maintainable? OPR
3. Whether the applicant has no locus standi to file the present application? OPR
4. Whether the application is barred by limitation? OPR
5. Whether the application filed by applicant is vague and malafide? OPR
6. Relief.

In support of her case, respondent No.1-Jasveer Kaur stepped into the witness box as PW-1. Besides examining herself, she examined her brother-in-law Gulzar Singh as PW-2, Narinder Kumar, Food Inspector as PW-3, Rajiv Kumar Singla, Special Assistant, State Bank of India, Ambala City as PW-4 and Dalbir Singh, Sarpanch, village Khaira as PW-5. She also proved on record documents Ex.A1 to A16. On the other hand, appellant Veena tendered into evidence documents Ex.R1 to R5.

Learned counsel for the appellant has vehemently argued that the learned Court below passed the impugned order without appreciating the evidence in the right perspective and on the basis of unwarranted assumptions and presumptions. It was further urged that in fact Gurdial Singh had married

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the appellant on 10.03.2010 and expired on 26.07.2014 in an accident i.e. after more than 5 years of the divorce decree. It was further averred that it was very apparent that respondent No.1-Jasveer Kaur had colluded with the parents of deceased Gurdial Singh after his death and filed an application for setting aside the ex parte judgment and decree of divorce.

Learned counsel for the respondent reiterated her averments made in the application filed before the court below and maintained her stand as taken before the court below.

We have heard learned counsel for the parties and reappraised the evidence and other material available on record.

It would be apposite to reproduce order 9 rule 13 of the Code of Civil Procedure (for short 'CPC'), which is as under:

“In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall made an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants, also:

Provided further that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.”

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A bare reading of the aforesaid provision leaves no manner of doubt that if an ex parte judgment and decree has been passed against an applicant without he/she having been duly served or if the applicant has been prevented by a sufficient cause from appearing on a particular date of hearing, the same can be set aside. This is precisely what respondent No.1-Jasveer Kaur pleaded in her application moved before the court below wherein she specifically averred that she along with her children had been residing at her matrimonial home at village Khaira and had never ever resided at village Dhanora i.e. the address given by Gurdial Singh in the divorce petition. The petition for divorce was filed by Gurdial Singh on 15.03.2008 and summons were issued to respondent No.1- Jasveer Kaur on 22.04.2008. However, as per the record, summons issued to Jasveer Kaur, were never received back served or otherwise. Strangely on the other hand, her power of attorney Ex.R1 had been filed on behalf of Jasveer Kaur on the same date i.e. 22.04.2008, which bore her signatures. The contention of the appellant that the filing of power of attorney by respondent No.1 Jasveer Kaur clinchingly indicates that she not only was aware of the divorce petition but she had intentionally not filed her written statement, and appeared in the Court, is devoid of any merit. Firstly, as per respondent-Jasveer Kaur, she had never resided at village Dhanora. Further, a joint bank account of Jasveer Kaur along with her husband Gurdial Singh was opened in the State Bank of India, Ambala City on 27.08.2008, i.e. after the date of filing of divorce petition, in which their address was of village Khaira, and the same was duly proved by AW-4 Rajiv Kumar Singla, Special Assistant, State Bank of India, Ambala City. Since, the “bank account

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opening form” was submitted after the filing of the divorce petition filed by Gurdial Singh, it lends credence to the version of respondent-Jasveer Kaur that her husband Gurdial Singh had obtained her signatures on blank papers, which she had signed in good faith on his asking. Hence, the argument of learned counsel for the appellant that Jasveer Kaur was aware of the divorce proceedings as she had filed her power of attorney deserves to be discarded and it is very apparent that the signatures of respondent No.1-Jasveer Kaur had been obtained by Gurdial Singh on blank papers and one out of those papers had subsequently been misused by him by filing a power of attorney on behalf of Jasveer Kaur.

AW-5 Dalbir Singh, Sarpanch, village Khaira further supported the case of respondent No.1-Jasveer Kaur qua the factum of her residing in village Khaira along with her children not only before but after the death of her husband Gurdial Singh. Further, all other documents like her Aadhar Card Ex.PX as well as Aadhar Card of deceased husband Gurdial Singh Ex.AW3/3, copy of bank account opening form Ex.AW4/2, copy of ration card Ex.AW3/2 and copy of LIC policy Ex.A8 reflect the address of Gurdial Singh as well as respondent-Jasveer Kaur at village Khaira, District Ambala. It is thus obvious that Gurdial Singh had intentionally given a wrong address of Jasveer Kaur in the divorce petition filed by him with an ulterior motive. When all these circumstances are seen in totality, it is very evident that respondent No.1 was never served and the power of attorney Ex.R1, which had been filed on her behalf, was in fact a document fabricated by the deceased husband Gurdial Singh for obvious reasons.

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The next argument raised by the learned counsel for the appellant is qua the maintainability of the application filed under Order 9 Rule 13 CPC before the court below. Once it stands proved that respondent No.1 Jasveer Kaur was not served and her signatures which had been obtained on blank papers by her husband Gurdial Singh and later on misused by converting them into a power of attorney on her behalf, the argument of learned counsel for the appellant that respondent No.1 would be barred to move an application for setting aside the ex parte judgment and decree dated 29.01.2009 after the expiry of 30 days is totally devoid of merit. In this background and after taking into account the totality of circumstances and other material, the assertion of respondent Jasveer Kaur comes across as credible and convincing that she came to know of the ex parte divorce decree obtained against her by Gurdial Singly only after his death on 26.07.2014 and it was soon thereafter she filed an application under Order 9 Rule 13 CPC at the earliest. Hence, in this background, the question of delay pales into insignificance as it stands well explained that respondent Jasveer Kaur was indeed a victim of fraud.

As already noticed above, Gurdial Singh had managed to obtain ex parte decree of divorce by playing a fraud on Jasveer Kaur by misusing the blank papers on which he had procured her signatures. Once the ex parte decree of divorce has been rightly set aside by the Court below, the marriage between Gurdial Singh (now deceased) and Jasveer Kaur would stand restored. Further, Gurdial Singh, who sought decree of divorce against Jasveer Kaur, being no longer alive, the proceedings, would in the facts and circumstances of the case obviously stand abated.

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As a sequel to the above, we find no ground to interfere in the impugned judgment dated 17.01.2019 passed by the court below, which is a well reasoned one. Consequently, the present appeal stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 22, 2019
Sonia

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No