

RSA No. 2665 of 2018 (O&M)

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

**RSA No. 2665 of 2018 (O&M)
Date of decision: 15.10.2019**

Manjit Singh

... Appellant

Versus

Joginder Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Namit Gautam, Advocate,
for the appellant.

ARUN PALLI, J. (Oral)

The suit filed by the plaintiff-appellant was dismissed by the trial court, vide judgment and decree dated 24.7.2015, and as even the appeal preferred against the said decree failed and was dismissed on 26.10.2017, he is before this Court in Regular Second Appeal. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

The plaintiff prayed for a declaration that he happened to be a joint owner in half share of a plot measuring 10 marlas 99 sq. ft., situated at Village Mubarakpur, and a site measuring 3 marlas, situated at village Chak Hussaina, comprised in specific khasra numbers depicted in the cause title of the plaint, for these were purchased by the defendant with the share of the

RSA No. 2665 of 2018 (O&M)

plaintiff in FDRs left by her adoptive father and husband of defendant, Sh. Mohan Singh. Further, the sale deed dated 3.1.2011, qua the land measuring 10 marlas and 99 sq.ft, and the sale deed dated 10.1.2011 in respect of the site measuring 3 marlas were results of fraud and null and void.

In brief, the case set out by him was that plaintiff happened to be a crane driver and was currently working in Dubai, and therefore, the present suit was being filed by his attorney, namely Palwinder Singh. Plaintiff was an adopted son of late Mohan Singh and his wife (Narinder Kaur). His adoptive mother, i.e. Narinder Kaur, expired in 1995-96 and late Mohan Singh solemnised second marriage with defendant (Joginder Kaur). Subsequently, even late Mohan Singh died intestate on 29.11.2010. Whereafter, the defendant encashed the FDRs of late Mohan Singh in an illegal manner and out of those proceeds, she purchased the suit property, pursuant to the sale deeds, indicated above, in her name. But, as the plaintiff happened to be the adopted son of late Mohan Singh, he had half share in the said FDRs, which the defendant had misappropriated. For the defendant declined to admit the claim of the plaintiff, and rather, proclaimed herself to be an exclusive owner of the suit property, thus the suit.

In the written statement filed by the defendant, it was pleaded, *inter alia*, that plaintiff was not an adopted son of late Mohan Singh. Name of the first wife of late Mohan Singh was Surjit Kaur and not Narinder Kaur. The adoption deed dated 22.8.1985 was alleged to be a forged document, as FDRs were in the joint names of late Mohan Singh and defendant (Joginder Kaur), and she being his widow, had every right to get the said FDRs encashed and purchase the suit property. Thus, the suit was liable to be dismissed.

The trial court, vide judgment and decree dated 24.7.2015, dismissed the suit under Order 17 Rule 3 of the Code of Civil Procedure, as despite opportunities, plaintiff failed to adduce any evidence. Being aggrieved, the plaintiff assailed the said decree by way of an appeal, which too was dismissed on 26.10.2017. Thus, as indicated above, this appeal.

Learned counsel for the appellant submits that as the appellant/plaintiff was living abroad, he filed the present suit through his attorney, namely Palwinder Singh, who died in the year 2012. The appellant came to India on 14.9.2015 and in respect of another suit, titled as Joginder Kaur Vs. Manjit Singh, he engaged Sh. Mukhtiar Mohd., Advocate. And to ascertain the status of the present suit, he contacted his counsel, Sh. Harbhajan Badhan, but despite repeated enquiries, no satisfactory response came-forth. Eventually, upon request of the appellant-plaintiff, Sh. Mukhtiar Mohd., Advocate, searched the case status of the present suit on the internet and found that the suit had since been dismissed on 24.7.2015 itself. Therefore, he submits that the impugned judgment and decree be set aside and the appellant is entitled to at least one opportunity to make good his claim.

I have heard learned counsel for the appellant and perused the records.

Ex facie, the suit was filed on 7.12.2011. The issues arising out of the pleadings of the parties were framed on 21.7.2014, and the matter was fixed for the plaintiff's evidence on 27.8.2014. For, no evidence was produced by the plaintiff on the adjourned date, the matter was adjourned to 9.10.2014, requiring the plaintiff to adduce evidence at his own responsibility. Again, even on 9.10.2014, no evidence was led and on

RSA No. 2665 of 2018 (O&M)

request, plaintiff was granted one last opportunity to lead his evidence and the matter was adjourned to 26.11.2014. Once again, plaintiff failed to adduce any evidence, but still on request of his counsel, the matter was adjourned to 21.1.2015, subject to last opportunity and costs of Rs.200/-, to be deposited in the District Legal Service Authority. However, the position remained the same as again on 21.1.2015, plaintiff failed to lead any evidence and the matter was adjourned to 24.3.2015, and thereafter to 8.5.2015 and then to 20.7.2015 for plaintiff's evidence. But to no avail. However, despite that, the matter was adjourned to 24.7.2015, requiring plaintiff to adduce his entire evidence, subject to last opportunity and costs of Rs.700/-. But neither did the plaintiff adduce any evidence, nor deposited the costs. In the given situation, the court was choice-less but to close the evidence of plaintiff by order, and for his claim remained unsubstantiated for lack of evidence, the suit was dismissed, in terms of the provisions of Order 17 Rule 3 CPC.

Albeit, in terms of Order 17 Rule 1 CPC, only three opportunities were required to be granted to the plaintiff to lead his evidence, but the appellant was granted as many as eight effective opportunities, including last opportunity and even subject to costs. Undoubtedly, provisions of Order 17 Rule 1 CPC are not mandatory in nature, yet the suit having been adjourned thrice, for any further adjournment not only a sufficient cause, as envisaged under Order 17 Rule 1 CPC, but a justifiable cause must co-exist. Apparently, there existed none in the matter at hands. As per the case of the plaintiff himself, his attorney, Palwinder Singh, died in the year 2012, which rather compounds his negligence and exhibits his insensitive approach towards his own claim and

RSA No. 2665 of 2018 (O&M)

court proceedings. This was never his case that death of Palwinder Singh in 2012 was not in his notice or knowledge. Therefore, despite being conscious that Palwinder Singh had passed away for a period of three years, i.e. till his suit was dismissed on 24.7.2015, he did not choose to resort to requisite measures to pursue the matter and watch his interest. In the given situation, it seems incredible that for over three years, post death of Palwinder Singh, he did not check even once with his counsel the fate of his suit or status of the proceedings. Significantly, counsel for the appellant, namely Harbhajan Badhan, continued to appear on all the dates till dismissal of the suit and it was pursuant to his requests, the matter was repeatedly adjourned, to enable the plaintiff to lead his evidence. Rather, the presumption that permeates records is that counsel for the appellant being conscious that suit was at a crucial stage must have apprised the appellant of the consequences that might entail if no evidence was lead. But it appears that despite that, appellant chose not to pursue the matter. Perhaps, for he was living abroad and the present dispute was not his priority. Further, the plea that appellant on his arrival on 14.9.2015, made enquiries to ascertain the status of the suit, but his counsel, Sh. Harbhajan Badhan, did not share the case status with him does not inspire confidence either. Nothing is stated if the appellant being aggrieved owing to the negligence and/or non-cooperation of his counsel made a complaint against him or initiated any proceedings. That being so, the only and the inevitable conclusion that could be reached: the appellant was guilty of deliberate and willful default and it was owing to his sheer negligence and inaction, the court was choiceless but to close his evidence by order. And dismiss the suit, in terms of provisions of Order 17 Rule 3 CPC, for he failed to lead any documentary or

RSA No. 2665 of 2018 (O&M)

oral evidence in support of his claim. In fact, it would be apposite at this stage to even refer to the observations recorded by the Hon'ble Supreme Court in M/s Shiv Cotex Vs. Tirgun Auto Plast P. Ltd. and others, 2011

(4) RCR (Civil) 807:-

“.....It is high time that courts become sensitive to delays in justice delivery system and realize that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit.

No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say 'justifiable cause' what we mean to say is, a cause which is not only 'sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or

the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit-whether plaintiff or defendant-must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. Insofar as present case is concerned, if the stakes were high, the plaintiff ought to have been more serious and vigilant in prosecuting the suit and producing its evidence. If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved

no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.”

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the findings recorded by both the courts were either contrary to the record or suffered from any material illegality. No ground is made out to interfere with the concurrent findings recorded by both the courts. The appeal being devoid of merit, is accordingly dismissed.

(ARUN PALLI)
JUDGE

October 15, 2019
AK Sharma

Whether speaking / reasoned:	YES
Whether Reportable:	YES/NO