

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

Sr. No.111

CR-3105-2021 (O&M)

Date of decision : 03.12.2021

Sukhvir Kaur

..... Petitioner

VERSUS

Harjinider Kaur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Paras Jagga, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

CM-13484-CII-2021

Application is allowed.

Exemption sought is granted.

CR-3105-2021

The petitioner is the third defendant in a civil suit filed by her niece and sister-in-law seeking a declaration that registered transfer deed No.1474 of 07.12.2006 executed by Sh. Avtar Singh son of Sh. Vir Singh is illegal and void. Consequent mutation is also illegal. Relief of joint possession has also been sought with consequential relief of permanent injunction restraining the defendants from transferring the suit property. The petitioner was proceeded against ex parte and an application for recalling the said order has partly been allowed. The trial Court has held that the application having been filed more than eight years after the date the petitioner was proceeded against ex parte, she cannot be permitted to ask for a *de novo* trial. She has been permitted to join the proceedings and address arguments as the case is ripe for the said purpose.

Learned counsel for the petitioner submits that service report dated 10.08.2011 (Annexure P-1) shows that the petitioner was never served. She was not residing at the address at which the notice was sent as she was married. The service report also states that the petitioner was not found as she was married and living at the in-laws house. Thus, the trial Court was in error in not setting aside the ex parte order and not permitting the petitioner to lead evidence.

Admittedly, the petitioner was proceeded against ex parte in the year 2012 and the application for setting aside the said order was filed in the year 2021. Thus, the trial Court was justified in concluding that being a sister of the other defendants, it could not be believed that she was not aware of the proceedings. There is nothing wrong with this conclusion as the remaining defendants are the brother and sister of the petitioner. Suit has been filed by her niece and sister-in-law and the litigation being amongst family members, she was bound to be aware of the same. Further, the remaining defendants would have already led evidence in support of their case that sale deed challenged in the suit was legal and valid. The trial Court was, thus, justified in permitting the petitioner to join the proceedings with effect from the date of passing of the order and to address arguments.

In view of above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

03.12.2021

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No