

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

CR-5749-2014 (O&M)

Date of decision: 17.11.2022

Gurjant Singh

....Petitioner

Versus

Mohan Singh and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Sherry K Singla, Advocate for the petitioner

ANIL KSHETARPAL, J (Oral)

1. Defendant no.1 in an already decided suit is the petitioner herein. His application for setting aside the ex-parte decree has been dismissed by the trial court as well as the First Appellate Court. Hence, the present petition has been filed.

2. Respondent no.1 (the plaintiff) filed a suit for grant of decree of declaration while impleading his own father Sh.Jagmaol Singh as well as the petitioner as defendants. The caption of the suit reads as under:-

“Suit for Declaration to the effect that the land measuring 8 Kanal 0 Marla, comprising in Khewat No.80 Khatuni and bearing Khasra No.1212/2/2/2min (8-0), situated within revenue limits of village Singo, Teh. Talwandi Sabo Distt.Bathinda is part of the Joint Hindu Family property & Ancestral property of the property of plaintiff and defendant No.2, and the plaintiff has birth right in it, by his birth in the said joint Hindu Family, and the Sale deed No.311, dated 6.5.2002, executed by defendant No.2, in favour of the defendant No.1 for the sale of above mentioned land, measuring 8 Kanal 0 marla, and the mutation of this sale bearing No.5898, sanctioned by the A. C. Ist Grade vide order dated 25.5.1996, are illegal, null, void, inoperative ineffective and not binding upon the rights of the plaintiff and the defendant No.1, has no

right in the above mentioned land, in any manner, on the basis of the above mentioned sale deed, and the entries of ownership are liable to be . corrected to this effect in the revenue record.

And

Suit for Permanent Injunction restraining the defendant No.1 from alienating in any manner, above mentioned land measuring 8 Kanal 0 marla, and also restraining the taking possession of the defendant No.1, from above mentioned land, from the plaintiff, illegally and forcibly, as the plaintiff is in joint ponnasion of the suit land with the defendant No.2.”

3. The petitioner appeared through Shri Kuldeep Singh Bangi, Advocate. Defendant no.2, the plaintiff's father did not choose to contest the suit. The Advocate representing the defendant No.1 (petitioner) did not appear, resulting in ex-parte proceedings and consequentially, an ex-parte decree was passed on 18th March. 2009. The petitioner's application for setting aside the ex-parte decree was filed on 30th July, 2009. It was stated in the application that his Advocate told him not to come and he will inform the petitioner by post as and when his presence is required. The petitioner has claimed that 15 days before the filing of the said application, he met Shri Kuldeep Singh Bangi, Advocate, who apprised him about the decree. It is submitted that after inspecting the file, he came to know that the suit has been decreed because his counsel stopped appearing.

4. As would be evident from the reading of the caption of the suit, the plaintiff, being minor son of the defendant no.2, filed the suit claiming that the property is joint Hindu Family property and the registered sale deed executed by his father in favour of the petitioner was is not binding upon his rights in the property. In the application, in order to prove that the petitioner was not negligent, he stepped into the witness

box and examined himself as AW1. Even his Advocate Shri Kuldeep Singh Bangi appeared as AW-2. He stated that on 11th August, 2008, he was busy in some other court when the court proceeded ex-parte against the petitioner. His clerk did not note the next date of hearing which resulted in ex-parte proceedings and consequential ex-parte decree.

5. The courts below have drawn a conclusion that the petitioner has failed to furnish a sufficient explanation for setting aside the ex-parte decree. It has been held that the petitioner was in the knowledge of the pendency of suit and the application was filed nearly 9 months after he was proceeded against ex-parte. The Court has made an observation that the counsel representing the petitioner was not responsible to intimate the petitioner and the petitioner should have, himself, acted vigilantly.

6. Heard learned counsel representing the petitioner at length and with his able assistance perused the paper book. At the outset, it is important to note that a registered sale deed executed by the plaintiff's father has been partially held to be inoperative against the rights of the plaintiff. Thus, the petitioner has suffered a serious prejudice. The plaintiff's father did not choose to contest the suit. He did not even file the written statement.

7. It is noted here that Sh.Kuldeep Singh Bangi, Advocate has, himself, stated that he informed the petitioner that the latter was not required to come unless he receives an intimation from the former. Thus, the assertions made in the application stood corroborated, not only by the deposition of the petitioner but also of his Advocate. In such

circumstances, the court is required to examine as to whether the petitioner was negligent in prosecuting the case. On receipt of the court notice, he engaged a counsel. He is a resident of Village Sardulewal, District Mansa, whereas, the property is located in village Singo, District Bathinda. Once his counsel had told him that whenever his presence would be required, he shall be intimated by post, the view taken by the learned trial court as well as the First Appellate Court is myopic. It is well settled that the courts should always make sincere endeavours for giving decision in the case based on merits after hearing both the parties rather than defeating legitimate claims/defences on technicalities or defaults. Once the reason for the petitioner's absence has been corroborated by his own counsel, the court should have taken a holistic view of the matter.

8. Keeping in view the aforesaid facts, the orders dated 30th May, 2012 and 10th July, 2014 are set aside. The suit is restored to its original number. Let the trial court decide the suit afresh after granting an opportunity to the petitioner to contest the same on merits. The petitioner through his counsel is directed to appear before the trial court on 16th December, 2022.

9. Disposed of.

10. All the pending miscellaneous applications, if any, are also disposed of.

17.11.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE