

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5746 of 2018 (O&M)
Date of decision: 22.11.2022

Mohinder Kaur and another

..Petitioners

Versus

Harbans Singh (deceased) through LRs and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. A.S.Khinda, Advocate
for the petitioners.

Mr. Ramesh Sharma, Advocate
for the respondents.

ANIL KSHETARPAL, J(Oral)

1. Assailing the correctness of order dated 02.08.2018, while allowing the application under Order 9 Rule 13 CPC filed by the respondent, the petitioner has filed the present petition.

2. Relevant facts, in brief, are required to be noticed.

3. Smt. Mohinder Kaur and Sh. Ajit Singh filed a suit for grant of decree of permanent injunction to restrain the defendants late Sh. Harbans Singh son of Sh. Boota Singh and the Gram Panchayat of village Mainwan, Tehsil and District Kapurthala, from interfering in their possession. Pursuant to the notice from the court, late Sh. Harbans Singh entered appearance through his son Sh. Lakhvinder Singh. They engaged Sh. K.G. Gandhi, Advocate as their counsel. Sh. Harbans Singh died on 18.09.2016. An application for bringing on record the legal representatives of late Sh. Harbans Singh was filed through Sh. Mukul Arora, Advocate. At that point

of time, Sh. K.G.Gandhi, Advocate, had gone abroad. After filing the

application, Sh. Mukul Arora, Advocate, verbally informed the court that he has no instructions to appear on behalf of the legal representatives of late Sh. Harbans Singh. The court proceeded ex-parte against the legal representatives.

4. Even the application for bringing on record the legal representatives was not allowed. No assertion has been made by Sh. Mukul Arora, Advocate, that the prospective legal representatives of late Sh. Harbans Singh have been informed of the fact that he is going to withdraw his power of attorney. Moreover, Sh. K.G.Gandhi, Advocate, at the relevant time, was not in India. Thus, based on these facts, the trial court has concluded that the ex-parte decree is required to be set aside.

5. Challenging the correctness of the order, the present petition has been filed.

6. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

7. The learned counsel representing the petitioner contends that Sh. Lakhwinder Singh son of late Sh. Harbans Singh was in the knowledge of the pendency of the suit, therefore, the court has wrongly set aside the ex-parte decree.

8. This court has considered the submission, however find no substance in it.

9. There is no dispute with regard to the knowledge of the pendency of the suit either to late Sh. Harbans Singh or his son Sh. Lakhwinder Singh. However, an application to bring on record the legal representatives of late Sh. Harbans Singh was filed through Sh. Mukhul Arora, Advocate, who, subsequently, pleaded that he has received no

instructions. At that stage, the court should have either directed the counsel to inform the proposed legal representatives or should have, itself, issued notice to the proposed legal representatives. In these circumstances, the proposed legal representatives had no knowledge that Sh. Mukul Arora, Advocate, pleaded no instructions and stopped appearing.

11. Keeping in view the aforesaid facts, no ground to interfere is made out.
12. Hence, dismissed.
13. All the pending miscellaneous applications, if any, are also disposed of.

November 22, 2022
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No