

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-6689 of 2013 (O&M)
Date of decision: 15.11.2022

Paramjit Singh and others

..Petitioners

Versus

Udhey Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.P.Garg, Advocate
for the petitioners.

Mr. S.K.Bawa, Advocate
for respondent no.1 and 6

ANIL KSHETARPAL, J(Oral)

1. Through this revision petition, late Sh. Amar Singh (defendant no.1) through his legal representatives, has challenged the correctness of the order dated 08.02.2012 passed by the trial court, while dismissing the appeal against the ex-parte judgment dated 31.08.2000 as well as the order dated 20.08.2013 passed by the First Appellate Court. The plaintiffs-respondents filed a suit for possession of land comprised in Khewat No.586, Khatauni No.681 and Khasra No.1047 located in village Mullanpur, Tehsil and District Ludhiana. They claim to be the bonafide purchasers of the property for value and prayed for decree of mandatory injunction directing defendant no.1 to deliver possession to them, after demolishing the construction.

2. Defendant no.1 and 2 filed a joint written statement while contesting the suit. It was brought to the notice of the court that the suit is barred by the principle of resjudicata as vide judgment dated 23.01.1980 passed by the Civil Court, Sh. Bachan Singh was restrained from alienating

any part of the suit property. The aforesaid judgment was affirmed in appeal on 28.07.1982.

3. Late Sh. Amar Singh was proceeded against ex-parte resulting in an ex-parte decree dated 31.08.2000. He filed an application under Order IX Rule 13 CPC, on 28.11.2000, claiming that he gained knowledge of the suit on 17.11.2000. He claimed that he was suffering from medical problems on account of various diseases including a disease relating to Neurology. He even remained admitted in Arora Neurology Hospital for about one week. The application was contested by the plaintiffs. In order to prove his case, late Sh. Amar Singh examined AW1-Dr. Amarjit Singh, who produced and proved the relevant slips Ex.P1 to Ex.P8. The trial Court dismissed the application on the ground that the application was filed beyond the prescribed time and late Sh. Amar Singh failed to disclose sufficient reasons for condoning the delay in filing the application. The first appeal filed by the defendant was also dismissed on similar grounds.

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

5. At the outset, it must be noticed that the plaintiffs' suit is based upon certain sale deeds which were set aside by the Civil Court vide an earlier judgment and decree dated 23.01.1980. Though, defendant late Sh. Amar Singh, while filing the written statement, disclosed this fact in his written statement, however, the plaintiffs, while filing the suit, concealed these facts. The trial court, though dismissed the suit filed for possession and mandatory injunction, however, held that the plaintiffs are co-owners in joint possession. The operative part of the judgment reads as under:-

“As a consequence of my findings returned above, suit for

mandatory injunction and for possession fails and the plaintiffs are held co-owners in joint possession making it clear that this judgment and decree to follow would be subject to results of previous litigation and shall have no effect if it is contrary to the previous judgments between the parties. Decree sheet be drawn and file be consigned to JRR Ludhiana after due compilation.”

6. It is observed here that civil cases are required to be decided on preponderance of probabilities. It is evident that late Sh. Amar Singh not only examined Dr. Amarjit Singh as AW1 but also examined AW2-Manjit Singh, son of late Sh. Amar Singh and AW3-Balour Singh. Both the courts have taken an adverse view on the ground that these witnesses conceded that they had knowledge about the pendency of the civil suit.

7. This cannot be the sole reason to take an adverse view, particularly when late Sh. Amar Singh, himself, did not dispute the knowledge of the pendency of the suit. He filed the written statement after entering appearance in the suit. It was only on account of default on a particular date of hearing that he was proceeded against ex-parte on 28.04.2000. Though, late Sh. Amar Singh did not remain admitted in the hospital run by Dr. Amarjit Singh, however, he produced MRI and CT Scan reports in order to support his plea with regard to his mental health. It is well settled that the courts must make sincere endeavours to decide the case on merits rather than on default or technicalities. In civil cases, the standard of proof is not in absolute terms i.e. Proof beyond all reasonable doubts. Hence, both the courts have applied wrong standard of proof. It may be noted here that both the courts have not recorded any finding that

late Sh. Amar Singh or his counsel were continuously defaulting. The courts are not expected to pass drastic orders on a mere first default without any malafide intent.

8. Keeping in view the aforesaid discussion, the orders dated 08.02.2012 and 20.08.2013 are set aside. Consequently, the ex-parte judgment and decree passed on 31.08.2000 shall also stand set aside. The suit is restored to its original number.

9. The revision petition is allowed.

10. The trial court is requested to decide the suit on merits after granting an opportunity to the parties to lead further evidence, if prayed for.

11. The parties through their counsels are directed to appear before the trial Court, on 15.12.2022.

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

November 15, 2022

nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*