

105

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1588-2020 (O&M)

Date of Decision:20.09.2022

Surjit Singh

.. Petitioner

Vs.

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Rahul Rampal, Advocate for the petitioner.

Mr. Kunal Muthreja, AAG, Punjab
for respondent No.1.

...

Manoj Bajaj, J. (Oral)

Petitioner (decree holder) is aggrieved against the order dated 31.10.2019 passed by Addl. District Judge, Ludhiana, whereby the application filed by respondent No.1-State of Punjab under Order IX Rule 13 CPC for setting aside the *ex parte* decree dated 18.07.2012 (Annexure P-2) was allowed.

Learned counsel for the petitioner has argued that the plaintiffs filed a suit for declaration in respect of the land measuring 30 kanals 02 marlas comprised in khata No.15/15 killa No.57//7, 8/1, 12/2, 13/1/1, 14/1/1, khata No.16/16, killa No.57//6, 15/1/1 situated in Village Bhutta, Tehsil and District Ludhiana and claimed ownership on the strength of registered Will dated 19.01.1996, who also prayed for a declaration that the mutation No.4906 dated 02.09.1997 in favour of defendants No.1 and 2 entered on the basis of another Will dated 20.01.1996 by the testator is null and void. He submits that during the suit proceedings, defendants were effectively served, and were proceeded against *ex parte*, however, the suit filed by the plaintiffs was dismissed vide judgment and decree dated

14.01.2009 (Annexure P-1).

Learned counsel has argued that aggrieved against the said judgment and decree dated 14.01.2009, an appeal was preferred by plaintiffs before the first appellate Court, but it was contested by only defendant No.1, whereas the others were proceeded against *ex parte*. The appeal was accepted vide judgment and decree dated 18.07.2012 and the suit was decreed. Learned counsel has drawn the attention of the Court to the application dated 15.03.2016 under Order IX Rule 13 CPC filed by defendant No.3-State of Punjab through SDM, Ludhiana to contend that not only it was barred by time, and was opposed on merits as well, but the Appellate Court proceeded to set aside the *ex parte* judgement and decree dated 18.07.2012 without even touching the objection relating to the delay in filing the application. He submits that the application under Order IX Rule 13 CPC was not even accompanied with any application for condonation of delay, and the impugned order dated 31.10.2019 has been passed mechanically, without even touching its maintainability, therefore, the interference is warranted by this Court.

Learned State counsel has argued that it is specifically noticed by the District Judge, Ludhiana in the impugned order that the property in question vests with the State and the relevant revenue entries were made pursuance to the order dated 31.01.2009 passed by Assistant Collector, First Grade, Ludhiana and the same has been upheld by the Appellate Authority as well as the Revisional Authority. He submits that the possession of the property is with the State, and as it was not effectively served during the suit proceedings, therefore, the order is justified. He prays for dismissal of the revision petition.

After hearing the learned counsel for the parties and considering the above background, this Court finds that in the application under Order IX Rule 13 CPC, there is no prayer made to seek condonation of delay in filing the application, and further during the course of hearing, it has not been disputed by the learned State counsel that no such application was filed for condonation of delay. The reply by the petitioner to the said application contains the specific objections regarding delay and though the same is noticed in the impugned order by the Addl. District Judge, Ludhiana, but it simply proceeded to accept the prayer without even ascertaining the maintainability of the application on various grounds. Thus, the impugned order is non speaking.

Resultantly, the revision petition is allowed, the impugned order is set aside and it is directed that the application filed by respondent No.1-State of Punjab be decided afresh after considering the material on record, including objections by the decree holder.

20.09.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No