

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

CR-3965-2019 (O&M)

Date of decision: 27.09.2022

Balwant Singh Dhillon

...Petitioner

Versus

Gurharbans Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S.Nagra, Advocate for the petitioner

Mr. G.S.Bhatia, Advocate for the respondents

ANIL KSHETARPAL, J (Oral)

The correctness of an order passed by the trial court on 13.05.2019, while allowing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), has been assailed while filing this revision petition in this Court. Sh.Balwant Singh Dhillon, a resident of Canada filed a suit challenging the correctness of a sale deed executed by his brother Sh.Ram Singh, on his behalf on the basis of a General Power of Attorney. The plaintiff claims that the aforesaid attorney is forged. Sh.Ram Singh, on the basis of the aforesaid attorney, allegedly sold the property in favour of Sh.Sukhdev Singh and Sh.Harbans Singh alias Sh.Gurharbans Singh. Sh.Sukhdev Singh is brother-in-law of Sh.Ram Singh and Sh.Balwant Singh Dhillon. Sh.Sukhdev Singh and Sh.Harbans Singh alias Sh.Gurharbans Singh did not contest the suit. The suit was decreed on 30.05.2003. The first

appeal as well as the second appeal were dismissed. At first stage, Sh.Sukhdev Singh filed an application under Order IX Rule 13 CPC to set aside the ex-parte decree dated 30.05.2003. The aforesaid application was dismissed by the court on 05.10.2011. Sh.Sukhdev Singh's revision petition was dismissed on 13.08.2015. Thereafter, Sh.Harbans Singh alias Sh.Gurharbans Singh filed an application under Order IX Rule 13 CPC on 19.03.2016. As already noticed, the suit was decreed way back on 30.05.2003. Thus, the application was filed after a period of nearly 13 years. The trial court has allowed the application, while observing that there was no personal service of notice effected on the applicant.

Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

It is evident that the court while setting aside the ex-parte decree, after a passage of 16 years has overlooked the facts as noticed above. In the facts of the case, the aforesaid facts are required to be noticed, particularly when the similar application filed by Sh.Sukhdev Singh (brother of respondent no.1) Sh.Harbans Singh alias Sh.Gurharbans Singh has already been dismissed, not only by the trial court but also by the High Court.

Keeping in view the aforesaid facts, the order dated 19.03.2016 is set aside. Revision petition stands allowed. The trial court is requested to re-decide the application after taking note of the facts noticed in the initial part of the order. The parties through their counsel are directed to appear before the trial court on 27.10.2022.

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

27.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE