

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213

CR-1272-2014 (O&M)
Date of Decision :09.02.2023

Sushila and another

...Petitioners

Versus

Vinod Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sudhir Hooda, Advocate for the petitioners.

None for the respondent.

* * *

Harsimran Singh Sethi, J. (Oral)

CM-3244-CII-2014

Application is allowed as prayed for.

CR-1272-2014

In the present revision petition, the challenge is to judgement and decree dated 12.03.2010 (Annexure P1/) as well as order dated 17.03.2012 (Annexure P/2) passed by the the trial Court on an application filed by the petitioner under Order 9 Rule 13 of the CPC for setting aside the judgement and decree dated 12.03.2010 (Annexure P/1) and also the order dated 06.12.2013 (Annexure P/3) passed in the appeal by the Lower Appellate Court by which, order passed by the trial Court on an application filed by the petitioner under Order 9 Rule 13 of the CPC has been upheld.

Learned counsel for the petitioners argues that though, the predecessor-in-interest of the petitioners was party to the suit but there was

no valid service upon the husband of the petitioner No.1, who was impleaded as defendant in the suit filed by respondent-plaintiff Vinod Kumar. Learned counsel for the petitioners further argues that as there was no valid service and Jagdish-husband of the petitioner No.1 had already died by the time, the exparte judgment and decree was pronounced by the trial Court on 12.03.2010, the same was liable to be set aside on an application preferred by the petitioner under Order 9 Rule 13 of the CPC but the same was dismissed by the trial Court vide order dated 17.03.2012 (Annexure P/2) without there being any application of mind and even an appeal preferred against the said order dated 17.03.2012 (Annexure P/2) was rejected vide order dated 06.12.2013 (Annexure P/3) by the Lower Appellate Court without appreciating the facts in a correct perspective.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

On being asked as to what is the perversity in the orders passed by the Courts below, no such perversity has been pointed out by the learned counsel for the petitioner. The Courts below have recorded a finding that after the suit was filed by the respondent/plaintiff wherein, the husband of the petitioner No.1 was arrayed as defendant, he had appeared before the trial Court and vakalatnama was also given, which was presented in the Court but thereafter, he did not associate himself with the proceedings and vide order dated 09.09.2008, he was proceeded exparte. On the date, when Jagdish was proceeded exparte, he was alive and he remained alive for a period of one year thereafter, but no action was taken by him for setting aside the exparte order dated 09.09.2008 hence, the judgment and decree of the trial Court dated 12.03.2010 cannot be termed as illegal and arbitrary

and against the facts on record.

Learned counsel for the petitioners has not been able to point out as to on what basis the order passed by the Courts below are perverse to the facts and evidence on record.

During the course of hearing before this Court, learned counsel for the petitioner, concedes the fact that no action has been taken by the petitioner qua the counsel, who had presented the vakalatnama in the Court below with the signatures of the husband of the petitioner. That being so, it is proved fact that husband of the petitioner appeared in the civil suit and thereafter, absented himself from the proceedings and thereafter, proceeded exparte, much before his death.

Hence, no perversity is pointed out by the learned counsel for the petitioner either on facts or law qua the orders passed by the Courts below dated 17.03.2012 (Annexure P/2) and 06.12.2013 (Annexure P/3) on an application preferred by the petitioner under Order 9 Rule 13 of the CPC.

Even otherwise, in the application filed by the petitioner under Order 9 Rule 13 of the CPC, it has been mentioned that husband of the petitioner was never served but the said stand is contrary to the facts which are already on record. The person, who approaches the Court with false averments so as to mislead the Court does not deserve any discretion hence, this Court will not like to exercise its discretion in favour of the petitioners especially, when facts which have been stated hereinbefore proved that there is no perversity in the orders passed by the Courts below, which have been impugned in the present revision petition.

Keeping in view the above, no ground for interference by this Court is made out and the revision petition is accordingly dismissed.

Consequently, CM-3245-CII-2014 is also dismissed.

February 09, 2023

(HARSIMRAN SINGH SETHI)

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JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No