

CR-3139 of 2018

2023:PHHC:150909

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3139 of 2018

Date of decision: 28.11.2023

Suresh since deceased through his legal heirs

.....Petitioners

Versus

Paramjit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. Akshay Jindal, Advocate, for the petitioners.
Mr. Rajneesh Raizada, Advocate, for respondent No.1.

NAMIT KUMAR, J.

CM-9626-CII of 2018

1. This application has been filed by the applicant-petitioners under Order 22 Rule 3 read with Section 151 CPC for impleading the LR's of petitioner-Suresh.

2. As per the averments made in para 2 of the application, petitioner-Suresh died on 08.03.2017 and left behind the LR's mentioned in para 3. It is also specifically mentioned that there is no other LR of the deceased. The application is supported by an affidavit of Sachin Kumar, who is one of the LR's.

3. In view of the above, the application is allowed and the LR's mentioned in paragraph 3 of the application are ordered to be brought on record for the purpose of pursuing this revision, subject to just exceptions.

CR-3139 of 2018

1. Instant revision petition has been preferred by the defendant-petitioners under Article 227 of the Constitution of India for

setting aside order dated 23.11.2015 (Annexure P-6) whereby application filed by the petitioners for setting aside *ex parte* order dated 03.10.2007 (Annexure P-2) and *ex parte* judgment dated 05.11.2012 (Annexure P-3) has been dismissed and for setting aside judgment dated 16.09.2017 (Annexure P-7) whereby appeal filed by the defendant-petitioners, has been dismissed by the Court of learned Additional District Judge, Ambala.

2. Brief facts, leading to the filing of the present revision petition are to the effect that respondent No.1 filed a suit for permanent injunction for restraining the petitioners from blocking the passage marked ABCD shown in red colour in the site plan of House No.945, Friends Colony, Ambala City. Upon notice, petitioner-defendant appeared through his counsel on 22.08.2007 and the matter was adjourned to 03.10.2007 for filing written statement. Petitioner-defendant No.1 did not appear and was proceeded against *ex parte* vide order dated 03.10.2007. The suit was decreed vide *ex parte* judgment and decree dated 05.11.2012 and petitioner-defendant No.1 was restrained from blocking the passage marked ABCD shown in the site plan annexed with the plaint and was further restrained from dispossessing the plaintiff from the house marked as DEIHGFE in the site plan of House No.945, Friends Colony, Ambala City. Respondent-plaintiff filed execution petition under Order 21 Rule 32 CPC. Upon notice in the execution petition, petitioner-defendant appeared and filed an application under Order 9 Rule 13 CPC for setting aside *ex parte* order dated 03.10.2007 and *ex parte* judgment dated 05.11.2012. The

said application filed by the petitioners was dismissed by the trial Court vide impugned order dated 23.11.2015. Aggrieved against order dated 23.11.2015, petitioners preferred an appeal, which also met the same fate vide order dated 16.09.2017 passed by the Court of learned Additional District Judge, Ambala.

3. Learned counsel for the petitioners contended that application filed by the petitioner has been wrongly dismissed by the trial Court without appreciating the facts and circumstances of the case. He further contended that defendant No.1-petitioner and plaintiff-respondent No.1 were the brothers and a compromise was effected between them. Therefore, on the assurance given by respondent No.1, defendant No.1 stopped pursuing the case as there was no occasion for him to disbelieve his brother. He further contended that in case the impugned order is not set aside, grave injustice will be caused to the petitioners.

4. On the other hand, learned counsel for respondent No.1 supported the impugned order dismissing the application of the petitioners for setting aside the *ex parte* proceedings. He further contended that no compromise, as alleged by the petitioners, was effected between the parties and respondent No.1 never asked the petitioners not to pursue the case.

5. I have heard learned counsel for the parties and perused the record.

6. This Court does not find any substance in the argument of the learned counsel for the petitioners that there was some compromise

between the parties, therefore, they stopped to pursue the case inasmuch as no statement to this effect was given by the plaintiff in the Court and the petitioners failed to prove the same on record. Alleged compromise, which does not contain any date and year or signature of any police official, relied upon by the petitioners before the police has no evidentiary value unless the same is proved before the Court of law. Moreover, in his written statement respondent-plaintiff has denied any compromise with the petitioner even before the police. Petitioners have taken a false plea to get the *ex parte* order and judgment set aside.

7. The impugned order passed by the Court below is quite detailed and well-reasoned and it does not suffer from any illegality or infirmity and is not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

8. Finding no merit in the revision petition, the same stands dismissed.

9. Pending application(s), if any, stand disposed of accordingly.

28.11.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No