

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

CR-4487-2017(O&M)

Reserved on:-25.4.2023

Date of Pronouncement:-2.5.2023

Gurnam Singh and another

...Petitioners

Versus

Baljit Pal Singh and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.G.S. Sirpikhi, Advocate
for the petitioners.

Mr.Ritesh Pandey, Advocate
for respondents No.3 to 5.

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 27.4.2017 passed by the Court of Additional Civil Judge(Sr.Divn.), Batala vide which an application under Order 9 Rule 13 CPC filed on behalf of defendants No.3 to 5 for setting aside ex-parte judgment and decree dated 29.8.2014 was allowed.

2. Briefly stated, facts of the case are that plaintiffs Gurnam Singh, Balbir Singh and two others, all residents of village Sangatpura, Tehsil Batala had brought a suit against defendants Baljit Pal Singh, Parjit Pal Singh sons of Jagjit Pal Singh as well as Darshan Kaur, Poonam Kaur and Kulwant Kaur, all residents of village Umarpura, Tehsil Batala, District Gurdaspur, seeking a declaration that change of entries in the cultivation column of jamabandis since the year 1988-89 onwards from the name of Battan Singh son of Khushal Singh in favour of defendants

No.1 and 2 and deceased Gulzar Singh now represented by his LRs defendants No.3 to 5 in respect of the land measuring 7 kanals 10 marlas and further entries incorporated in the khasra girdawari also to that effect are illegal, null and void against pronounced judgment and decree dated 26.4.1970 etc.

3. Notice of that suit was given to the defendants. Only defendants No.1 and 2 had put in appearance and offered a contest, whereas defendants No.3 to 5 did not appear despite service, as such were proceeded against ex-parte. Then on completion of the trial, the suit was decreed on 29.8.2014.

4. Defendants No.1 and 2 had preferred an appeal against the judgment and decree passed by the trial Court, which was assigned to Additional District Judge, Gurdaspur. Subsequently, defendants No.3 to 5 in the suit, namely, Veer Kaur @ Darshan Kaur, Poonam Kaur and Kulwant Kaur had filed an application under Order 9 Rule 13 CPC for setting aside of the ex-parte judgment and decree dated 29.8.2014 contending that applicant No.1 was known as Veer Kaur instead of Darshan Kaur amongst relatives, friends and locality; the plaintiffs in the suit had wrongly mentioned her name as Darshan Kuar widow of Gulzar Singh in the original plaint so as to get ex-parte decree; the applicants were not served properly; they had not received any summons nor any munadi was effected; the applicants were not aware about the pendency of the suit and they were wrongly proceeded against ex-parte; their absence was not intentional or wilful but due to wrong report made by the Process Server; the applicants had not received any notice as per registered AD

post also; the applicants came to know about the ex-parte judgment and decree passed by the trial Court when they had received notice from the Court of Additional District Judge (Fast Track Court), Gurdaspur asking them to appear there on 5.12.2014 and on 5.12.2014, the applicants have appeared in the appeal and then they came to know about the ex-parte decree dated 29.8.2014. Therefore, the application be accepted.

5. On notice the respondents No.1 and 2/plaintiffs had appeared and contested the application contending that the application was time barred and no application had been filed under Section 5 of the Limitation Act for condonation of delay. The assertions in the application were contested contending that as per record name of applicant No.1 is Darshan Kaur widow of Gulzar Singh and applicant had refused to accept the summons sent on 17.4.2008; thereafter Munadi on the same address was conducted as per order of the Court for 30.7.2008; the applicants had full knowledge about the proceedings and passing of the decree and they had deliberately and intentionally not put in appearance in the Court; their address is the same, which was given in the suit by answering respondents/plaintiffs. In the end, such respondents/plaintiffs prayed for dismissal of the application.

6. Respondents No.4 and 5 had not filed any reply. Issues on merits were framed and parties were afforded adequate opportunities to lead evidence in support of their respective claims.

7. After hearing learned counsel for the parties, the trial Court of Addl.Civil Judge (Sr.Divn.), Batala allowed the application and set aside the ex-parte judgment and decree dated 29.8.2014.

8. Such order left the respondents, who are plaintiffs No.1 and 2 aggrieved and they have approached this Court by way of filing the present revision petition, notice of which was issued to the respondents and respondents No.3 to 5 have put in appearance through counsel.

9. I have heard learned counsel for the parties besides going through the record and I find that there is absolutely no merit in the revision petition.

10. The trial Court considering the facts and circumstances of the case observed that a lenient view should be taken for setting aside of ex-parte proceedings/decrees to afford the applicants a hearing in the matter and to offer a contest. I do not find a reason to disagree with the trial Court in that regard. Considering the facts and circumstances of the case, it would be quite harsh towards the applicants if doors of contest are shut upon them because their rights in valuable property may be adversely affected in the process.

11. The impugned order passed by the trial Court 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.

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

The interim order dated 15.11.2017 passed by this Court staying further proceedings thus comes to an end.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

2.5.2023

(H.S.MADAAN)

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JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No