

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

CR-1325-2019(O&M)

Reserved on:-5.5.2023

Date of Pronouncement:-11.5.2023

Smt.Shanta Joshi

...Petitioner

Versus

Ram Saroop and others

...Respondents

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

Present: Mr.Sarju Puri, Advocate
for the petitioner.

Mr.Sushil Jain, Advocate and
Ms.Archana Chauhan, Advocate
for respondents No.1(a) and (b).

H.S. MADAAN, J.

1. Under challenge in this revision petition is the order dated 6.2.2019 (Annexure P1) passed by Addl.Civil Judge(Sr.Divn.)/RC, Garhshankar vide which an application filed by petitioner Shanta Joshi, who is defendant No.1 in the civil suit for setting aside ex-parte proceedings dated 13.5.2013 had been dismissed.

2. Briefly stated, facts of the case are that plaintiff Ram Saroop (since dead) through his LRs had brought a suit against defendants Smt.Shanta Joshi – widow, Archana – married daughter of Sh.Subhash

Chander, residents of Ward No.5, Railway Road, Garhshankar, District Hoshiarpur as well as Amarjit Singh, Sandeep Kumar Sanjit Kumar etc. seeking separation of 1/6 share of the plaintiff by way of partition of house situated in the area of Ward No.5, Garhshankar and putting the plaintiff in possession of separated portion as exclusive owner besides craving for grant of permanent injunction restraining the defendants from taking exclusive possession of any specific portion or alienating any specific portion etc. of the house in the suit.

3. Notice of that suit had been given to the defendants. Since defendant No.1 Smt.Shanta Joshi had not appeared despite service, as such she was proceeded against ex-parte vide order dated 13.5.2013.

4. Subsequently, such defendant had appeared and filed an application for setting aside of ex-parte proceedings contending that such applicant/defendant No.1 was in USA residing with her son there at the relevant time, when the suit was filed and she had returned to India about two years years; she was not on good terms with her daughter Archana and son Sandeep; there was nobody to inform her about the pendency of the case. Furthermore, in such application, the defendant was not personally served and she had come to know about ex-parte proceedings when defendant No.3 had started threatening to take possession of the disputed property illegally about a week prior to filing of the application dated 28.1.2019.

5. Such application was resisted by the plaintiff contending that defendant No.1 was residing at the address mentioned in the plaint and she was duly served on that address; she is residing there with her family

members; in addition, she had been served by way of publication in the newspaper; the application in question had been filed just to prolong the litigation and harass the plaintiff, who had been contesting the case for more than 6 years. The plaintiff prayed for dismissal of the application.

6. The application was dismissed by the trial Court vide the impugned order.

7. Such order left the applicant/defendant No.1 aggrieved and she has approached this Court by way of filing the present revision petition, notice of which was issued to the respondents. However, only respondents No.1(a) and 1(b) have put in appearance through counsel.

8. 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.

9. Though the applicant in the application filed by her had submitted that she was not in India when notice of the suit had been sent to her, rather she was residing with her son at USA but then she did not place on record copy of her passport in support of such assertions that she was away from India during the period in between the date when suit was filed on 10.9.2012 till she was declared ex-parte vide order dated 13.5.2013 and application in question was filed on 28.1.2019. The passport would have gone a long distance in helping her in establishing her case but for the reason best known to her, the applicant had withheld such document leading to an inference that if such document had been proved in evidence, the same would not have been favourable to her case.

10. Secondly her plea that she did not have good relations with

her daughter Archana and son Sandeep Kuamr does not come out to be convincing and plausible. The trial Court has observed that summons had been issued for the service of applicant/defendant No.1 and her service was also got effected by way of publication in the newspaper. The purpose of filing the application seems to be to prolong the proceedings and to set the clock back so as to have a denovo trial, which is already more than 6 years old. The trial Court was justified in dismissing the application.

11. Learned counsel for the revision petitioner has referred to judgments i.e. *G.P. Srivastava Versus R.K. Raizada & ors., 2000(1) RCR(Rent) 238, Vijay Kumar Madan Versus R.N. Gupta Technical Education Society, 2002(1) RCR(Rent) 560, Royal Solvex Pvt.Ltd. Versus Balwinder Singh and others, 2015(5) RCR(Civil)659* and *Smt.Mukhtiar Kaur Versus Smt.Ghulab Kaur, 1977 PLR 185*. However, those judgments are not applicable to the present case due to different facts and circumstances and the context in which such observations had been made.

12. 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.

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

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

11.5.2023

(H.S.MADAAN)

Brij

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No