

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R. No. 3549 of 2023

Pronounced On : October 20, 2023

Shri Krishan

.... Petitioner

vs.

Prem Devi and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. S.K.Verma, Advocate
for the petitioner.

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GURBIR SINGH, J. :

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 18.04.2013 (Annexure P-4), passed by learned Additional Civil Judge (Senior Division), Meham (for brevity – Trial Court) and the order dated 07.05.2015 (Annexure P-6), passed by learned District Judge, Rohtak, whereby application of the petitioner filed under Order 9 Rule 13 CPC has been dismissed by both the aforementioned Courts.

2. The brief facts, as culled out from the paper book, are that petitioner is defendant no.4 before the learned Trial Court. Plaintiff/respondent no.1 filed a suit against defendants no.1 to 4 for declaration with consequential relief of permanent injunction that the Wills dated 05.08.2022, 31.10.2022 and 10.02.2023 and mutation no.8258, sanctioned on the basis of said Wills, are null and void. The case of the plaintiff is that he is co-sharer in the land measuring 39 kanals 10 marlas, as

mentioned in the heading of the plaint. The mother of respondent no.1/plaintiff and respondents no.2 and 3 was the owner of the suit land. She died on 11.05.2003. She was incapable of proper hearing. She was not mentally fit. Respondents no.2 to 4/defendants no.1 to 3 got executed three Wills in a period of six months taking benefit of mental condition of her mother. Respondent no.1/plaintiff, after the death of her mother, asked respondents no.2 to 4 to get the mutation of the suit land sanctioned in favour of all her legal heirs but they refused. Later on, they succeeded to get the mutation no.8258 entered in their favour on the basis of aforesaid Wills. The Civil Court issued the summons to the petitioner and on the basis of report dated 16.05.2005 submitted by process server, respondents no.2 to 4 were proceeded against ex-parte vide order dated 17.05.2005 and suit was decreed vide judgment dated 27.02.2008 (Annexure P-2).

3. When the petitioner/defendant no.4 came to know about the passing of the ex-parte judgment and decree, then he filed application under Order 9 Rule 13 CPC for setting aside the ex-parte judgment and decree dated 27.02.2008, stating therein that in fact, no process server ever came to the petitioner/defendant no.4 and other defendants to serve the summons and he never refused to receive the summons and notice. Even there is no witness to prove refusal. Summons were sent to him through registered post and no munadi was conducted in the village. Munadi qua other defendants was ordered but the same was not done and it was only on papers. He came to know about passing of ex-parte judgment and decree only on 02.05.2010, when plaintiff/respondent no.1 along with some other persons came to the

suit land and tried to forcibly dispossess him from the suit land. So, he moved application under Order 9 Rule 13 CPC (Annexure P-3). The same was dismissed by learned Trial Court vide order dated 18.04.2013 (Annexure P-4). Appeal filed against the order dated 18.04.2013 of learned Trial Court was also dismissed vide order dated 07.05.2015 (Annexure P-6).

4. Learned counsel for the petitioner has argued that as per report of the process server (Annexure P-7), the petitioner refused to accept the summons but process server did not obtain signatures of any of the witnesses like Panch, Sarpanch, Chowkidar, Lambardar etc. and straightway gave noting that none gave witness at the spot. The Civil Court was required to adopt procedure as envisaged under Order 5 Rule 17 CPC. It was required to examine process server in the Court to prove the factum of service of the petitioner but process server was not examined. The petitioner did not come to know that in the application for cancellation of mutation, copy of order dated 25.04.2004 was produced. Had he known about the pendency of the civil suit, he would have certainly appeared in the suit. Last Will of the mother of the petitioner was dated 07.02.2003 and the same was duly registered in the office of Joint Registrar, Meham on 10.02.2003. Reliance in this regard has been placed on Amrit Kaur (since deceased) through LRs vs. Inderpal Kaur and others – Law Today Live Doc. Id.17839, wherein as per report of process server on the summons, the same was not witnessed by anyone and in the absence of any witness, it was held by a Co-ordinate Bench of this Court that, it cannot be said that respondents stood duly served.

4. I have heard learned counsel for the petitioner and perused the case file.

5. The specific case of the petitioner is that he came to know about the pendency of case and passing of ex-parte judgment and decree only on 02.05.2010. However, the order dated 22.02.2006, passed by learned Collector, Meham (Ex.D-1) reveals that the petitioner was appellant therein and in those proceedings, it was clearly mentioned that interim orders of Civil Suit No.88/1 dated 11.09.2004 were produced before the Court at the time of arguments, before learned Collector, Meham. The said appeal was remanded. In other words, the case of the petitioner was remanded on production of order passed in the pending suit, in which was petitioner was proceeded against ex-parte. Thus, it can be safely concluded that the petitioner got knowledge about the pendency of civil suit on 11.09.2004 but the petitioner did not bother to appear in the suit. In the report on the summons, it is mentioned that no one witnessed the report. The petitioner was required to prove that he did not have any knowledge of the pendency of the case and he did not refuse to accept summons. Burden lies on the person, if no evidence is led, then he would fail. The petitioner did not bother to examine the process server. The petitioner was already aware about the pendency of the case on 11.09.2004, as is evident from the document Ex.D-1. The application for setting aside ex-parte judgment and decree is filed on 01.06.2010 i.e. after more than 05 years 08 months. In case Lingeswaran etc. vs. Thirunagalingam reported as 2022(2) RCR (Civil) 319, it is held by Hon'ble Apex Court that the Court has no power to extend

the period of limitation on equitable grounds. The statutory provision may cause hardship to a particular party but the Court has no choice but to enforce it giving full effect to the same. Since petitioner was having knowledge of pendency of suit, even if there was any irregularity in the service of summons, then the same is not a ground to set aside the ex-parte judgment and decree, in view of the proviso of Order 9 Rule 13 CPC.

6. In view of the above discussion, I find no illegality in the orders passed by both the Courts below, warranting interference by this Court.
7. Accordingly, the present revision petition is hereby dismissed being devoid of any merit.
8. Pending applications, if any, shall stand disposed of along with this judgment.

October 20, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes.
Whether reportable ?	Yes/No.