

CR-5522 of 2023 (O&amp;M)

2023:PHHC:162642

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

CR-5522 of 2023 (O&amp;M)

Date of decision: 18.12.2023

Charan Singh (deceased) through his LR

.....Petitioner

Versus

Upkar Singh Khajala and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR**

Present: - Mr. D.S. Kahlon, Advocate,  
for the petitioner.

Mr. Haneet Sharma, Advocate,  
for Mr. Ranjit Sharma, Advocate,  
for respondents No.1 and 3.

**NAMIT KUMAR, J.**

1. Instant revision petition has been preferred under Article 227 of the Constitution of India read with Section 151 CPC for setting aside order dated 01.09.2023 (Annexure P-5) passed by the Court of learned Civil Judge (Senior Division), Amritsar, whereby petitioner/decreed-holder has been declared *ex parte* as well as order dated 08.09.2023 (Annexure P-8) whereby an application filed by the petitioner under Order 9 Rule 7 CPC for setting aside order dated 01.09.2023, has been dismissed.

2. Brief facts of the case as pleaded in the petition are that proforma respondents No.4 and 5 Manjeet Kaur and Ramandeep Singh (wrongly mentioned as performa respondent Nos.6 and 7 in the petition) had entered into an agreement to sell dated 07.03.1994 in

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respect of plot measuring 750 sq. yards bearing khasra No.636 situated in the area of Sultanwind Sub Urban, Daburji Road, Tehsil and District Amritsar in favour of plaintiff-Charan Singh (deceased and now represented through his legal heir Satwant Singh). The date of execution of sale deed was fixed upto 07.07.1994 by the parties, however, sale deed was not got executed by proforma respondents No.4 and 5. Therefore, plaintiff-Charan Singh filed a suit for possession by way of specific performance of agreement to sell dated 07.03.1994 in respect of aforesaid plot. The suit was decreed by the Court of learned Civil Judge (Senior Division), Amritsar, vide judgment and decree dated 02.09.2004. Aggrieved against the judgment and decree dated 02.09.2004, proforma respondents No.4 and 5 filed an appeal, which was dismissed by the Court of learned District Judge, Amritsar, vide judgment and decree dated 07.11.2005 by upholding the judgment and decree of the trial Court. Thereafter, proforma respondents No.4 and 5 filed Regular Second Appeal before this Court, which was also dismissed by this Court. Consequently, petitioner/deGREE-holder-Charan Singh filed execution petition No.66 of 2005 before the Executing Court for execution of judgment and decree dated 02.09.2004 passed by the trial Court. The decree was executed in favour of the decree-holder and sale deed dated 21.12.2006 was got registered by appointing Local Commissioner by the executing Court in favour of the petitioner/deGREE-holder Charan Singh and decree-holder got the possession of the plot in question and later on execution petition was withdrawn by him. After withdrawal of the execution petition,

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respondents No.1 to 3 filed their third party objections before the executing Court alleging therein that original owners, namely, Karnail Singh, Mehal Singh and Jarnail Singh had never sold any land out of khasra No.636 to perform respondent No.5-Ramandeep Singh and, therefore, he was not competent to sold out the land measuring 750 sq. yards out of khasra No.636. The third party objections were contested by the petitioner and same were dismissed by the Executing Court vide order dated 18.07.2012. Aggrieved against order dated 18.07.2012, respondents No.1 to 3 filed Civil Misc. Appeal No.22613 of 2013, which was accepted by the lower appellate Court, Amritsar and the case was remanded back to the Executing Court for fresh decision vide order dated 11.09.2017. Against the order dated 11.09.2017 of the lower appellate Court, petitioner approached this Court by way of filing of Civil Revision No.1363 of 2018, which was dismissed vide order dated 08.12.2022 and the relevant portion thereof is reproduced as under :-

*“4. The respondents filed the objections in the execution petition claiming that the original owners were Karnail Singh, Mehal Singh and Jarnail Singh sons of Mit Singh and the property was never owned and possessed by Ramandeep Singh, Judgment Debtor No.2. Many suits between the parties are pending. Some have been decided in favour of the 3rd party objector, whereas the other cases are still pending. In such circumstances, the court has found it appropriate to remand the matter back to the Executing Court to hear and decide the objections in a detailed manner like a suit as required under Order 21 Rule 101 CPC.*

5. *Hence, no ground to interfere is made out.*
6. *Dismissed.*
7. *All the pending miscellaneous applications, if any, are also disposed of”*

3. Thereafter, objectors examined their witnesses in chief. On 17.08.2023, learned counsel for the petitioner moved an application for de-exhibition of documents before the executing Court, which was fixed for 01.09.2023 for consideration. Owing to no representation on behalf of the petitioner, he was proceeded against *ex parte* vide impugned order dated 01.09.2023. Thereafter, the petitioner moved an application under Order 9 Rule 7 read with Section 151 CPC for setting aside order dated 01.09.2023, which has been dismissed by the executing Court vide impugned order dated 08.09.2023.

4. Learned counsel for the petitioner contended that non-appearance of the counsel for the petitioner was neither intentional nor willful but due to unavoidable circumstances as on 01.09.2023 he was busy in advancing arguments in another matter before another Court at Tarn Taran and the appellant could not appear as he was not available in town. He further contended that as soon as the petitioner and his counsel came to know about the passing of impugned order dated 01.09.2023, they immediately filed an application under Order 9 Rule 7 CPC for setting aside order dated 01.09.2023 which also stands dismissed. He further contended that the trial Court has erroneously passed the said order without application of the judicious mind. He further contended that the object of the Courts is to provide justice to the parties by affording them suitable opportunity to produce their

evidence. He further submits that as per provisions of Order 9 Rule 7 CPC if the defendant has given good cause for his previous non-appearance in *ex parte* proceedings he may upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if had appeared on the day fixed for his appearance. He also contended that in case the impugned orders are not set aside, petitioner would suffer an irreparable loss.

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

6. Ex-facie suit relating to the present proceedings was decreed in favour of the petitioner on 02.09.2004. Concededly parties to the lis are fighting against each other for their rights since long as elaborated in the petition and duly observed by Coordinate Bench of this Court vide order dated 08.12.2022, reproduced herein above. There is no denial of the fact that present trial Court proceedings pertain to the year 2005 and it comes in category of history sheeted case being an oldest case. But still, keeping in view the facts and circumstances of the case, this Court deems it appropriate to exercise its jurisdiction under Article 227 of the Constitution of India in favour of the petitioner in the interest of justice and based upon the provisions enshrined in Civil Procedure Code.

7. It is also apt to mention here that surprisingly respondents No.1 and 3 have filed application bearing No.20318-CII of 2023 for setting aside the order dated 01.09.2023 and 08.09.2023 submitting therein that they have no objection if the present civil revision is

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allowed with costs and by giving directions to the trial Court to decide the case by giving one date to the petitioner to conclude his entire evidence including cross-examinations etc.

8. In view of the above, the instant petition deserves to be allowed and the impugned orders dated 01.09.2023 and 08.09.2023 are set aside and petitioner is directed to join the trial Court proceedings. The trial Court shall proceed with the matter in accordance with law.

9. Interim order dated 19.09.2023 passed by this Court shall stand vacated.

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

18.12.2023  
R.S.

**(NAMIT KUMAR)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No