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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision:- 16.10.2023

Varun Garg and Anr.

....Petitioners

Versus

Harcharan Singh and Ors.

...Respondents

CORAM:- HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Aayush Goyal, Advocate for the petitioners.

Mr. Jaswinder Sharma, Advocate for
Mr. Ravish Bansal, Advocate
for respondents No.1 and 2.

AMARJOT BHATTI, J.

1. The petitioners/defendants No.13 and 14 have filed petition under Article 227 of the Constitution of India for setting aside the impugned order dated 30.05.2019 (Annexure P-4) restoring the suit being illegal and against the law.

2. Learned counsel for the petitioners argued that plaintiffs had filed a suit for possession by way of partition of land measuring 17 kanal 12 marlas alleged to be in joint possession of the plaintiffs and the defendants. The copy of plaint is Annexure P-1. The suit was filed in the year 2016 and notice was issued to all the defendants. During the proceedings notice was ordered to be issued to defendants No.4 to 6 and 8 to 14. The process was not deposited along with the correct addresses as per the directions of trial Court and ultimately, it was dismissed for want

of prosecution vide order dated 30.01.2017 which is Annexure P-2. Thereafter, plaintiffs filed application for restoration of case against the aforesaid defendants. The copy of application is Annexure P-3. The said application was allowed vide impugned order dated 30.05.2019 (Annexure P-4). Before passing this order, no notice was served upon the petitioners/defendants. They were not given any opportunity of being heard. It was without following proper procedure. The application was allowed and notice was again ordered to be issued to defendants No.4 to 6 and 8 to 14. To support his arguments, the learned counsel has also relied upon the authority of Coordinate Bench cited in **2017(5) R.C.R. (Civil) 305** titled as **“Fateh Jang Singh and Others vs. Gurmail Singh and Others.”** where in that case ‘the suit was dismissed in default on 26.08.2009 wherein the application for restoration of suit was filed in November, 2011 after a period of more than two years. It was held that as per the Limitation Act, the application should have been filed within 30 days. The petitioners were unable to establish sufficient cause for their non-appearance on the date when their suit was dismissed in default. It was held that dismissal of application was proper.’ By relying upon this authority, learned counsel for the petitioner argued that the impugned order dated 30.05.2019 (Annexure P-4) may kindly be set aside by accepting the present civil revision.

3. I have considered the arguments and have gone through the record. The copy of plaint is Annexure P-1. According to which the plaintiff Harcharan Singh and others filed suit for separate possession by way of partition of land measuring 17 kanals 12 marlas of land as per copy

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of jamabandi for the year 2014-15 situated in village Bhokhra, Tehsil and District Bathinda by metes and bounds. As per the plaint, there were as many as 14 defendants arrayed in this case. It is also matter of record that regarding defendants No.4 to 6 and 8 to 14 the suit was dismissed in default for non deposit of correct addresses as well as process fee. The suit was still pending for the service of defendants when application was filed for restoration of suit against defendants No.4 to 6 and 8 to 14, it was allowed vide impugned order dated 30.05.2019 (Annexure P-4). I have considered the nature of litigation. In a suit for partition of property by metes and bounds, all the co-sharers are necessary parties and in the absence of any of the co-sharer the suit for partition cannot be adjudicated. Moreover, in this case, the suit was still pending against the other defendants. The presence of Mr. Y.S.Khurmi, Advocate was marked for the defendant. So far as the authority relied upon by learned counsel for the petitioner is concerned, it is not applicable to the facts of the present case.

Therefore, I do not find any reason to interfere in the impugned order dated 30.05.2019 (Annexure P-4) and the same is accordingly upheld.

Accordingly, the civil revision stands dismissed.

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

16.10.2023

Sunil Devi

(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No