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

CR No. 5475 of 2022

Date of Decision:21.07.2023

Kamlesh Kumar

... Petitioner

Versus

Khushal Singh & Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Nitin, Advocate,
for Mr. Piyush Setia, Advocate
for the petitioner.

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SANJIV BERRY, J.

Present revision petition has been preferred under Article 227 of the Constitution of India, by the present petitioner (defendant No.12 in the civil suit, i.e. *CIS Case No. CA322/2014*, titled *Rakesh Kumar and others Vs. Khushal Singh and Others*, against the impugned order dated 08.08.2022 (Annexure P-2), passed by learned Additional District Judge, Jalandhar, whereby application filed under Order 41 Rule 21 CPC for re-hearing the appeal, decided vide judgment dated 23.02.2017 (Annexure P-1), has been dismissed.

2. Brief facts of the case are that Mihan Singh, an agriculturist by profession, resident of Village Manko, was recorded as owner of the suit land, i.e. land measuring 79K-17M situated in Village Phillaur Hadbast No. 153, Tehsil Phillaur, District Jalandhar, as per the *Jamabandi* for the year 2006-2007. The said Mihan Singh along with his son, namely Lashkar Ram, and grand sons, namely Rakesh Kumar, Ramesh Lal and Sukhdial

Singh, have made the said barren land fit for cultivation/fertile. Mihan Singh died on 12.05.1996 leaving behind plaintiffs No. 1 to 3 and defendant No. 2 as sons along with defendant No. 11 as daughter to the extent of 1/4th share each along with defendants No. 4 to 9 being sons of Kartar Singh to the extent of 1/4th share and defendants No. 2 and 3 as legal heirs of Darshan Singh to the extent of 1/4th share along with defendant No. 1 to the extent of 1/4th share as per Hindu Succession Act. He executed a valid will on 30.07.1994 in favour of his grand sons, i.e. plaintiffs and defendant No. 12- Kamlesh Kumar, in equal shares as he was looked after in his old age by his grand sons along with Lashkar Ram and his family. The necessary dues/payments of Government with regard to the said suit land were also made by the plaintiffs and defendant No. 12. After the death of Mihan Singh, plaintiffs got mutation of suit land in their favour on the basis of Will in the Month of July 2007. However, the said mutation could not be entered immediately after the death of Mihan Singh as the suit land was not recorded in ownership of Mihan Singh in the Jamabandi and Conveyance Deed was only issued on 12.02.2007. Later, the Assistant Collector Ist Grade has illegally sanctioned mutation of Mihan Singh vide order dated 24.10.2008 on the basis of natural succession by illegally ignoring the Will in favour of Plaintiffs and defendant No. 12. On the basis of earlier mutation, defendants No. 1 to 11 tried to take the forcible possession of the said suit land.

3. After considering the facts and circumstances of the suit, the suit was dismissed and appeal was instituted by the plaintiffs against the defendants. The said appeal was dismissed vide judgment dated 23.02.2017 passed by learned learned Additional District Judge, Jalandhar. Thereafter,

defendant No. 12, the present petitioner, moved an application under Order 41 Rule 21 CPC for re-hearing the appeal, however, the said application was dismissed vide Order dated 08.08.2022 (Annexure P-2), hence the present revision.

4. Learned counsel for the petitioner contends that the petitioner was not in the knowledge of the appeal filed by the plaintiffs as he did not receive any summons. Hence, he did not appear in the Court and was proceeded against ex-parte and the appeal was dismissed by the learned Additional District Judge, Jalandhar. On coming to know about dismissal of the appeal, the petitioner moved the application under Order 41 Rule 21 CPC for rehearing of the appeal but the same was dismissed vide order dated 08.08.2022.

5. After considering the submissions made by learned counsel for the petitioner and perusing the record, it transpires that the appeal was filed on 12.05.2014 and notice of the said appeal was issued to the respondents for 15.05.2014. The applicant-petitioner had appeared in the said appeal on 30.08.2014 and his signatures were also obtained on the zimni sheet as a mark of his presence in the Court. Thereafter, the petitioner opted not to appear in person or through counsel, hence, he was proceeded against ex-parte. Once the petitioner, namely Kamlesh Kumar, has appeared in person in the proceedings and this fact finds corroborated from his signatures appearing on the zimni sheet, the plea taken by the petitioner that he was not served any notice nor any substituted service was effected upon him, is rendered untenable. Whereas the petitioner after having notice of the proceedings had appeared in Court on 30.08.2014 and put his signatures in

the Court as a mark of his attendance then it does not lie in his mouth to say that he was not served in the case.

6. Thus, in the light of the above discussion, it is observed that the learned Additional District Judge, Jalandhar has correctly and judiciously passed the impugned order dated 08.08.2022 (Annexure P-2) dismissing the application of the petitioner for re-hearing of the appeal, and I do not find any infirmity in the impugned order dated 08.08.2022 so as to call for any interference by this Court.

7. Resultantly, finding no merit in the petition the same is hereby dismissed.

(SANJIV BERRY)
JUDGE

21.07.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |