

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CR-515-2021 (O&M)
Decided on: 05.01.2024

Sumit Singh and another

...Petitioners

Versus

Gurmit Singh and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. R. S. Bajaj, Advocate
for the petitioners.

Respondent No.1 ex parte vide order dated 21.04.2023.

Service of respondents No.2 to 9 dispensed with
vide order dated 21.04.2023.

RITU TAGORE, J.

1. The challenge in present revision is to an order dated 04.03.2020 passed by learned Civil Judge (Senior Division), Jalandhar in CS No.58296/2013 titled as ‘Gurmit Singh Vs Gurpal Singh and others’, whereby petitioners’ application to set aside *ex-parte* proceedings initiated against them vide order dated 16.01.2019, has been dismissed.
2. I have heard learned counsel for the petitioners and perused the paper book.
3. Learned counsel for the petitioners submits that impugned order is unsustainable in the eyes of law being against facts on record. While taking this Court through the impugned order, learned counsel submits that LRs of defendant No.2 were wrongly proceeded *ex parte*, whereas

application for bringing the LR's on record was still not decided by the learned Court and this fact was duly incorporated in the application (Annexure P-5) seeking setting aside the *ex parte* order dated 16.01.2019. Further, it is submitted that Ms. Chunpreet Kaur and Ms. Prabhjeet Kaur, minor daughters of late Sukhwinder Singh, though represented through Sumit Singh (defendant No.4) the next friend and guardian of the minors, could not have been proceeded *ex parte*. Furthermore, order dated 16.01.2019 was silent with regard to the presence of defendant No.4 and Mr. Inderjit Singh Bhatia, Advocate, although he had been appearing for all of them.

4. To support his contentions, learned counsel for the petitioners referred to the written statement (Annexure P-2) showing that it was jointly filed on behalf of defendants No.2, 4 and minor daughters of late Sukhwinder Singh by Amandeep Singh as GPA of Sumit Singh, who is next friend and guardian of minors Chunpreet and Prabhjeet Kaur, through their counsel Mr. Inderjit Singh Bhatia, Advocate and to the application under Order 22 Rule 4 CPC for impleading the LR's of Kuldeep Singh s/o Sh. Sohan Singh, defendant No.2 (Annexure P-3), wherein Amandeep Singh has been mentioned as one of the LR's of deceased Kuldip Singh (defendant No. 2). Further, in the application it was also mentioned that copy of the death certificate was attached with the application. The learned counsel submits that learned Court below failed to appreciate these facts and erroneously passed the impugned order. It is contended that impugned order being against law and facts, is liable to be set aside.

5. The grounds of revision are supported by an affidavit of Rajbir Singh son of Ranjit Singh, resident of village Salempur Mussalmana, PO Randhawa Masandan, Tehsil and District Jalandhar, the SPA (Annexure P-

7). Respondent No.1, despite being served through affixation after his refusal to accept the summons, did not appear in the revision-petition to contest it. He was proceeded against *ex parte* and claim qua respondents No.2 to 9 was relinquished by the petitioners, as recorded on their behalf through their counsel, as mentioned in order dated 21.04.2023.

6. Learned lower Court while passing the impugned order observed the following in concluding paragraph:-

‘By way of present application, one Amandeep Singh has requested for setting aside *ex parte* order passed against LR of defendant no.2, 4 and Ms.Chunpreet Kaur Manu and Ms. Prabhjit Kaur Manu. He has to prove that he has been duly authorized by these persons to file the present application. He has not placed on record any power of attorney or any other document to prove that he has been authorized by said persons to file application on their behalf. Secondly, applicants qua which application has been filed were directed to produce the death certificate of defendant No.2 vide order dated 10.12.2018. They were directed to produce the same in the Court on 16.01.2019 but instead of producing the death certificate, they did not appear in the Court due to which they were proceeded against *ex parte*. The counsel has not gone through the file nor perused the orders and has moved frivolous application without going through the orders. So, application is hereby dismissed, subject to cost of Rs.5000/-. DWs be produced on 17.03.2020.’

7. In the copy of the plaint (Annexure P-1), it is revealed that Gurmit Singh s/o Sohan Singh (respondent No. 1 in this revision), filed a suit for declaration against Gural Singh and others alleging that he along with defendants are owners in joint possession of the estate (suit land as detailed in the plaint) left by Sohan Singh to the extent of their respective shares and mutation No.1443 regarding the estate of Sohan Singh and

subsequent revenue entries are null and void and are not binding on the rights of the plaintiff and defendants No. 3 to 5. In the alternate, he also prayed for joint possession, alongwith further relief for grant of permanent injunction restraining the defendants No.1 and 2 from transferring/ alienating more than their share on the basis of wrong revenue entries and not to change the nature of suit land and dispossess the plaintiff from suit land except in due course of law. The plaintiff *inter alia* pleaded that his father Sh.Sohan Singh died intestate and had not executed any will during his life time qua his estate, as such upon his demise all his property had devolved in equal shares upon plaintiff and defendants. He further claimed that defendants No. 1 and 2 had forged and fabricated will dated 18.3.1980 allegedly bequeathing all his properties to defendant No. 1 & 2.

8. Furthermore, from the averments taken in the revision, it is evident that the trial Court vide order dated 27.09.2018 partly allowed an application for impleadment of Ms.Chunpreet Kaur and Ms. Prabhjeet Kaur, minor daughters of late Sukhwinder Singh and dismissed qua other persons.

9. The copy of written statement (Annexure P-2) indicates that defendants No. 2 and 4 and minor daughters of Sukhwinder Singh, filed a joint written statement contesting the assertions of the plaintiff. Copy of order dated 16.01.2019 (Annexure P-4) shows that on that day, learned lower Court framed as many as 7 issues from the pleadings of parties and due to absence of appearance on behalf of LR's of defendant No.2, they were ordered to be proceeded against *ex parte*.

10. In the application for setting aside *ex parte* proceedings (Annexure P-5) it is evident that Amandeep Singh moved an application as GPA for Sumit Singh and as next friend and natural guardian of the minor daughters Chunpreet Kaur and Prabhjeet Kaur. The said application was

filed through their counsel Mr. Inderjit Singh Bhatia. In the application (Annexure P-3) for impleadment of legal heirs of Kuldeep Singh son of Sohan Singh (defendant No. 2), Amandeep Singh has also been mentioned as one of his LRs, being his son along with other LRs. Additionally, the fact of enclosing the copy of death certificate is also mentioned therein. In the application for setting aside *ex parte* proceedings, once again, fact of enclosing a copy of death certificate and special power of attorney has also been averred. So, the observation of the learned lower Court that Amandeep Singh is an unauthorized person is wrong and that death certificate was not produced is also not prima facie made out from the material on record.

11. In the impugned order, there is no mention that Mr. Inderjit Singh Bhatia, Advocate is not the counsel for defendants No.2, 4 and minor daughters. Rather, photocopy of written statement (Annexure P-2) available on record indicates that it was jointly filed by defendants No.2, 4 and minor daughters through their advocate Mr. Inderjit Singh Bhatia. Again, impugned order does not refer to the fact that application for impleadment of LRs of defendant No.2 (Annexure P-3) has already been adjudicated upon. The material assertions as made in this revision have remained unchallenged from the opposite side as none appeared to contest the same.

12. In light of this, the *ex parte* proceedings against LRs of defendant No.2, as per order dated 16.01.2019 are patently illegal. Consequently, order impugned herein, which dismisses the setting aside of *ex parte* proceedings against the LRs not yet impleaded in the case, is inherently flawed. Moreover, proceedings against minor children through *ex prate* measures were improper. The Court plays a role of *locus parentis* for their citizens who are unable to protect their interest due to some infirmity or

minority. Order 32 Rule 3 and 4 CPC mandates the Court to appoint a proper person as a guardian *ad litem* for the minor when finds that minor is not represented by his/her guardian. Learned lower Court should have appointed a Court guardian for the minors to protect their rights in absence of their guardian or next friend. Additionally, order dated 16.01.2019 is silent on the presence of respondent No. 4 and on the appearance or non-appearance of Mr. Inderjit Singh Bhatia, Advocate on behalf of defendants No. 2, 4, and minor daughters. On this regard, order dated 16.01.2019 is also bad.

13. After considering all these facts and circumstances, the impugned order cannot withstand judicial scrutiny. It is patently wrong and liable to be set aside. Accordingly, the same is set aside. Learned trial Court is directed to reconsider petitioners’ application for setting aside *ex parte* proceedings (Annexure.P-5), in accordance with law.

14. Revision petition stands disposed of accordingly.

15. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

05.01.2024
Rimpal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No