



CR-7638-2023 (O&M)

133

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-7638-2023 (O&M)

Date of decision : 27.01.2025

Harjit Kaur

..... Petitioner

versus

Gulab Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Balbir Singh Jaswal, Advocate and
Mr. Ankit Bhardwaj, Advocate
for the petitioner.

Ms. Tuneet Walia, Advocate
for respondent No.1.

Mr. Jainainder Saini, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

1 Revision petition arises out of proceedings under Order IX Rule 13 CPC. Petitioner who was arraigned as defendant and was proceeded ex-parte in the suit filed application under Order IX Rule 13 CPC for setting aside ex-parte decree dated 15.07.2019 (Annexure P-5) whereby sale deed in her favour has been set aside. The application filed by the petitioner stands dismissed by both the Courts below.

2 Respondent Gulab Singh filed civil suit bearing No.12 dated 16.01.2018 seeking possession by way of specific performance of agreement to sell dated 24.11.2015 *qua* land measuring 3 kanals 12 marlas. As per the plaintiff, agreement to sell was executed in his favour by defendant No.1

**CR-7638-2023 (O&M)**

Mangal Singh on the receipt of earnest money of Rs.2,86,000/-. Defendant No.1 agreed to sell land in his favour for consideration of Rs.16,00,000/- per acre i.e. Rs.7 lakh 20 thousand for 3 Kanals 12 marlas. The parties agreed to get the sale deed executed on or before 23.11.2015. 2 kanal of land was already mortgaged with defendant No.3 Nazar Singh. Parties agreed to keep mortgage money of Rs.1,50,000/- separately as '*amanat*' to be paid to defendant No.1. Plaintiff claims that he remained present in the office of Sub-Registrar, Baba Bakala Sahib on 23.11.2015, but defendant No.1 failed to come present. The plaintiff later on came to know that defendant No.1 had already sold the land in favour of defendant No.2 on 22.01.2016. In the main suit, thus plaintiff apart from seeking decree of possession by way of specific performance, also sought declaration against the sale deed executed by defendant No.1 in favour of defendant No.2 Harjit Kaur dated 22.01.2016 to the effect that the same is not binding on the rights of the plaintiff.

3 Defendant No.2 and 3 were proceeded ex-parte. Defendant No.1 contested suit. He pleaded that his signatures were obtained on blank papers. He admitted of having received an amount of Rs.1,05,000/- and pleaded that he was ready to return the same.

4 Trial Court decreed the suit in favour of the plaintiff vide judgment and decree dated 15.07.2019.

5 Instant application was filed by the petitioner-defendant No.2 under Order IX Rule 13 CPC pleading that she came to know of the ex-parte judgment and decree only on 06.09.2019 when plaintiff approached her and threatened to dispossess her.

**CR-7638-2023 (O&M)**

6 Application was contested by the plaintiff claiming that defendant No.2 came present before the Trial Court personally on 07.02.2018 and opted not to contest the suit, thereafter and was thus proceeded ex-parte. On the basis of the pleadings the Court framed following issues :-

- “1) Whether the plaintiff is entitled to relief of possession by way of Specific performance of agreement to sell dated 24.11.2015? OPP*
- 2) Whether plaintiff is entitled for alternative relief of recovery of Rs.5,72,000/-? OPP*
- 3) Whether plaintiff is entitled to relief of Permanent Injunction as prayed for? OPP*
- 4) Whether the suit of the plaintiff is not maintainable? OPD.*
- 5) Whether the plaintiff has no locus standi to file the present suit? OPD.*
- 6) Whether the suit is misuse of process of law? OPD*
- 7) Whether the plaintiff has not come to the Court with clean hands? OPD.*
- 8) Whether the suit of the plaintiff is bad for misjoinder and non-joinder of necessary parties? OPD*
- 9) Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD*
- 10) Whether the suit is not properly valued for the purposes of Court fee and jurisdiction? OPD.*
- 11). Whether agreement to sell dated 24.11.2015 is a forged and fabricated document? OPD*
- 12) Relief.”*

7 While deciding issue No.1 Trial Court recorded the finding that though as per the report submitted by the Process Server the summons could not be served upon the applicant however order dated 07.02.2018 shows that

**CR-7638-2023 (O&M)**

she came present before the Court and her presence was also marked on the zimni order dated 07.02.2018. Trial Court thus holding that the applicant-petitioner opted not to contest the suit, despite being fully aware of the *lis* dismissed the application filed under Order IX Rule 13 CPC. The Trial Court further held that the application having been filed beyond 30 days was barred by limitation.

8 The aforesaid findings have been affirmed by the Appellate Court.

9 Mr. B.S.Jaswal, Advocate for the petitioner while assailing the findings recorded by the Courts below submits that despite recording finding that the petitioner was never served in the Civil Suit, the Courts below dismissed the application filed under Order IX Rule 13 CPC merely relying upon signatures on the order sheet of 16.01.2018 which were disputed by the applicant in her application. In the absence of there being any service upon the applicant there was no reason for her to appear before the Trial Court. He submits that the suit filed by the plaintiff was in fact a collusive suit between plaintiff and defendant No.1 to defeat the sale deed executed by defendant No.1 in favour of the petitioner. He submits that it is highly improbable that a vendor who is in need of money, shall agree to get the sale deed executed on receipt of balance sale consideration after 2 years of receipt of about 1/3rd of the total sale consideration.

10 *Per contra* learned counsel for the respondents have opposed the plea raised by counsel for the petitioner and have supported the orders passed by the Courts below.

**CR-7638-2023 (O&M)**

11 Ms. Tuneet Walia, Advocate submits that the presence of the petitioner was recorded in the order sheet dated 16.01.2018. Order dated 07.02.2018 records that she is present in person. Thus, the Courts below rightly dismissed the application filed by the petitioner in the light of overwhelming evidence on record to prove that she was in the knowledge of pendency of the suit.

12 I have heard learned counsel for the parties and have gone through records of the case.

13 From the records it is discernible that the suit was instituted on 16.01.2018. On the said date Trial Court denied prayer for *ad-interim* injunction made by the plaintiff. Notice was issued to defendants No.1 to 3 for 07.02.2018. The summons were issued to the defendants. Courts below have also found that as per record, the same could not be served upon defendants. Defendant No.2 was not found present in her house though process server claims that the summons were pasted in front of her house but there is no witness to the same as the Chowkidar was not present on the spot. The order dated 07.02.2018 reads as under :-

“Defendants no. 1 and 2 appeared in person and Jagroop Singh appeared on behalf of defendant no.3. Parties stated at bar that there are chances of compromise between the parties. For effecting compromise between the parties file be put up on 17.2.2018.”

14 At the bottom of the order dated 16.01.2018 signatures of Mangal Singh, Jagroop Singh son of late Nazar Singh and Harjit Kaur are present. The signatures of Jagroop Singh also show that Nazar Singh was no

**CR-7638-2023 (O&M)**

more on the said date. The matter was adjourned to 17.02.2018. On 17.02.2018 Court noticed that defendant No.2 and Jagroop Singh on behalf of defendant No.3 appeared in person on 07.02.2018 but have not come present on 17.02.2018. The Court proceeded against them ex-parte which finally culminated in the ex-parte decree.

15 In the considered opinion of this Court though order dated 07.02.2018 records that defendant No.2 i.e. petitioner is present in person however there is no satisfaction recorded by Court *qua* identity of person present. There is nothing on record to show that any person identified petitioner-defendant No.2 before the Court on the said date or that the Court was satisfied after seeing any identity document of defendant No.2 that the person present was Harjit Kaur. The petitioner in her application and evidence has denied those signatures. In case the presence recorded in the order sheet dated 16.01.2018 is treated to be on its face value even then the Trial Court erred in procedure. On the said date, Jagroop Singh appeared on behalf of defendant No.3 and signed as Jagroop Singh Son of **late Nazar Singh**. Meaning thereby on that date Nazar Singh was no more. Instead of asking the plaintiff to implead LR's of Nazar Singh Trial Court proceeded ex-parte even against Nazar Singh on the next date. This shows that Court on 17.02.2018 was not aware of the signatures on order sheet dated 16.01.2018.

16 In view thereof, this Court finds that in the absence of any proof with regard to service upon the petitioner, signatures on the order sheet dated 16.01.2018 do not show that she was in the knowledge and was conscious of the *lis* which challenged her sale deed. In view thereof, this Court finds that

**CR-7638-2023 (O&M)**

the Courts below erred in dismissing the application filed by the petitioner seeking setting aside of ex-parte decree which has resulted in annulment of registered sale deed in favour of defendant No.2-the petitioner.

17 As a consequence of the discussion held hereinabove, the present revision petition is allowed. Orders passed by both the Courts below are hereby set aside. Application filed by the petitioner under Order IX Rule 13 CPC seeking setting aside of the ex-parte decree dated 15.07.2019 is allowed. Ex-parte judgment and decree dated 15.07.2019 is set aside. Parties are directed to appear before the Court of Civil Judge, Sr. Division Baba Bakala Sahib on 05.05.2025

18 Keeping in view that the suit relates to the year 2018, this Court is sanguine that the Court of the First Instance shall make an endeavor to decide the suit within a period of one year. Petitioner/Defendant No.1 shall not delay the trial by her act or conduct and shall actively aid the expeditious disposal of the suit.

27.01.2025*Pooja Sharma-I***(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No