

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

207

Date of decision: 13.03.2026

1. CR-3913-2018 (O&M)

Raj Kumar

...Petitioner(s)

Vs.

Smt. Janak Bhatia @ Babal and others

...Respondent(s)

AND

2. CR-4973-2018 (O&M)

Raj Kumar

...Petitioner(s)

Vs.

Smt. Janak Bhatia @ Babal and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rajinder Goel, Advocate and
Ms. Anavi Parnami, Advocate
for the appellant(s) in both cases.

Mr. D.K.Prajapati, Advocate
for respondents No. 1 and 2.

Mr. Raman Chawla, Advocate
for respondent No.4.

NIDHI GUPTA, J.

CR-3913-2018 (O&M)

Present Civil Revision Petition under Article 227 of the
Constitution of India has been filed by the petitioner/defendant No.3
seeking setting aside of the order 18.02.2016 (Annexure P-5) passed by
learned Civil Judge (Junior Division), Faridabad; whereby petitioner was



ordered to be proceeded against exparte; and the order dated 27.03.2018 (Annexure P-18) passed by the learned CJJD, Faridabad; whereby the application filed by the petitioner for setting aside the order dated 18.02.2016, has been dismissed.

CR-4973-2018 (O&M)

Present Civil Revision Petition under Article 227 of the Constitution of India has been filed by the petitioner/defendant No.3/judgment debtor seeking setting aside of the order 09.07.2018 (Annexure P-5) passed by learned Civil Judge (Junior Division), Faridabad; whereby objections filed by the petitioner, have been dismissed; and the sale made in favour Janak Bhatia/plaintiff/respondent No.1 herein has been confirmed; and further direction has been issued for issuing sale certificate in favour of Janak Bhatia with a further direction that the sale certificate shall bear date as 9.7.2018 on which the sale become absolute. It has further been prayed that the warrants of possession ordered to be issued in favour of decree-holder be set aside; and the objection petition dated 2.7.2018 be allowed and the petitioner be allowed to contest the application for passing final decree in the case.

2. Both the above said Civil Revision Petitions are being disposed of by this common order as both emanate from the same civil proceedings; are between the same parties; and facts and issues involved in both the Revision Petitions are identical. For the sake of convenience, facts are being drawn from, and parties and Annexures are



being referred to as per their status in CR-3913-2018 titled as "**Raj Kumar vs. Smt. Janak Bhatia @ Babal and others**".

3. Learned counsel for the petitioner *inter alia* submits that the petitioner was wrongly proceeded against *exparte* as there is no evidence on record that the service has been validly affected upon the petitioner. It is submitted that a bare reading of the *zimni* orders dated 06.05.2016, 02.07.2016, 22.09.2016 (Annexure P-6 colly) and service report shows that even on 09.08.2016 registered AD was not received served or unserved. It is contended that in this view of the matter there is no proof on record that service was validly affected upon the petitioner. Therefore, petitioner could not have proceeded against *exparte* vide order dated 18.02.2016 (Annexure P-5). Consequentially, application filed by the petitioner for setting aside *exparte* order, was wrongly dismissed vide second impugned order dated 27.03.2018 (Annexure P-18).

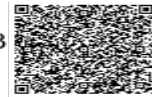
4. As regards dismissal of his objections, learned counsel for the petitioner contends that in view of the fact that service was not validly affected upon the petitioner, execution proceedings could not have been allowed to continue. Since no notice was ever served upon the petitioner either through third party, the alleged action was one-sided affair and at the instance of Janak Bhatia. In fact, vide order dated 07.01.2013 (Annexure P-2), file was consigned *sine die* and was to be summoned after decision on the application for setting aside the *exparte* preliminary decree. Clearly therefore, all proceedings leading upto



passing of the final decree were *exparte* in nature. It is admitted fact on record that the petitioner had duly filed an application for setting aside *exparte* order, which was pending consideration during which time, execution proceedings were initiated. It is submitted that during the pendency of the said application of the petitioner, execution proceedings could not have been concluded. Impugned orders, therefore, suffer from material error being *ex-facie* unjust, inequitable and deserve to be set aside.

5. *Per contra*, learned counsel for respondents No. 1 and 2 submits that the petitioner has reflected exhibited incorrigible attitude. Notice to the petitioner has been affected not once but several times and through *munadi*. It is the petitioner, who has chosen not to appear in the proceedings. In fact, he has misrepresented and concealed material facts from the Courts below. Therefore, petitioner was correctly proceeded against *exparte*; and his application for setting aside *exparte* order was correctly dismissed; and impugned order dated 09.07.2018 (Challenged in CR-4973-2018) whereby objections of the petitioner have been dismissed, is a speaking order which suffers from no error. Accordingly, learned counsel for respondents No. 1, 2 and 4 prays for dismissal of the present Revision Petitions.

6. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of *Id.* counsel for the petitioner.



7. Brief facts of the case that the parties are real brothers and sisters, being five siblings, children of Lajwanti. To properly appreciate the dispute at hand, a brief chronological sequence of events will be helpful:

31.12.1970: Lajwanti, mother of the parties, had purchased a residential house/suit property. There is no dispute with regard to the fact that the suit property was the self acquired property of Lajwanti.

13.3.1994: Lajwanti, mother of the petitioner and respondents herein had died, leaving behind her husband, namely Navneet Lal, as well as the parties as her only legal heirs.

24.5.2001: It is the case of the plaintiffs/respondents no. 1 & 2 herein, that after death of Lajwanti, the suit property is to be divided amongst all the 6 legal heirs as per succession. Respondent no.4 has relinquished her share in favour of her brothers i.e. the petitioner/defendant no.3 and Prem Kumar/defendant no.1/respondent no.3 herein.

11.6.2001: The record further reveals that after the death of Lajwanti, the petitioner/defendant no.3 in collusion with Prem Kumar/defendant no.1/respondent no.3 herein, with the view to grab the suit property had filed two different suits for declaration i.e. Civil Suit no. 173 of 24.5.2001; as well as Civil Suit no. 174 of 24.5.2001, without impleading all the legal heirs, including their father as a party. Only Radha Bhatia respondent no.4 herein was impleaded as a party to the suits. The said suits were filed with the pleading that the plaintiffs therein i.e. petitioner and Prem Kumar are in possession of the suit property; and a family



settlement has been arrived at between the parties. Therefore, the petitioner and respondent no.3 had become absolute owners of the suit property.

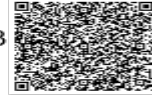
8. Subsequently, both the above said suits were clubbed together by the learned Trial Court; in which a consent decree dated 11.6.2001 came to be passed by the learned Presiding Judge of the Permanent Lok Adalat, Faridabad, in favour of petitioner as well as Prem Kumar.

18.4.2006: When the plaintiffs discovered about this consent decree, they challenged it on the ground that said judgment and decree was passed on the basis of fraud, misrepresentation, and concealment; and that there was no family settlement between the parties at any point of time. The said suit came to be dismissed by the learned trial court vide judgment and decree dated 18.4.2006.

20.1.2007: However, the Civil Appeal filed by the plaintiffs was allowed by the learned first Appellate Court vide judgment and decree dated 20.1.2007; and the judgment and decree dated 18.4.2006 was set aside, holding all the legal heirs of Lajwanti as owners of the suit property to the extent of 1/6 share each.

9. The said judgment and decree dated 20.1.2007 attained finality as it was never challenged by the petitioner or Prem Kumar. However, in the meantime, father of the parties had expired.

17.04.2007: It is thereafter that the Plaintiffs filed the instant suit for partition of the suit property by metes and bounds as per their



respective shares i.e. $1/5^{\text{th}}$ share of the suit property; **and** in the alternative, for sale of the suit property in open auction as per market value thereof. As noted above, in the said suit plaintiffs are the respondents no. 1 and 2 herein, petitioner is the defendant no.3, Prem Kumar/respondent no.3 is defendant no.1, and respondent no.4 is the defendant no.2.

19.9.2007: Upon notice, the petitioner and Prem Kumar had duly appeared and filed their written statement; whereas defendant no.2/respondent no.4 did not appear and was proceeded ex parte vide order dated 19.9.2007.

12.1.2010: Subsequently, counsel representing Prem Kumar had also appeared before the trial court and pleaded no instruction whereupon Prem Kumar was also proceeded against ex parte vide order dated 12.1.2010.

13.01.2010: Suit filed by the plaintiffs was decreed by the Ld. Trial Court and a preliminary decree for partition was passed with costs in favour of the plaintiffs/respondents no.1 & 2 herein holding that they are owner of $1/5$ share each in the suit property.

09.02.2010: On the basis of preliminary decree dated 13.01.2010, plaintiffs filed an application for passing of final decree. The petitioner and Prem Kumar duly appeared through counsel.

18.05.2012 (Annexure P-1): In the said proceeding, Prem Kumar/Defendant no.1-respondent no.3 with an intention for lingering on the matter filed an application dated 18.05.2012 before the Trial



Court for staying further proceeding on the ground that he has already filed an application for setting aside the exparte/preliminary decree dated 13.01.2010 despite the fact that he had duly appeared in that proceedings and filed his written statement and was proceeded exparte vide order dated 12.01.2010 on instruction of his counsel.

07.01.2013 (Annexure P-2): Consequentially, in view of the application filed by the defendant no.1 the case was ordered to be adjourned sine die by the Ld. Trial Court.

26.11.2013: Subsequently, the above said application filed by defendant no.1 was dismissed in default by the Ld. Civil Judge on 26.11.2013.

03.07.2014 (Annexure P-3): Accordingly, Plaintiffs filed an application to restore the case at its original number as the application of the defendant no.1 had been dismissed in default by the Ld. Civil Judge on 26.11.2013.

11.08.2014: A perusal of the zimni orders from 11.8.2014 till 8.2.2016 (Annexure P-4 colly), shows that vide order dated 11.8.2014 Notice was issued in the said application to all the parties, including the petitioner as well as respondents 3 & 4.

10.4.2015: Vide order dated 10.4.2015, the petitioner and Prem Kumar were ordered to be served through Munnadi

21.09.2015: It is recorded in Zimni order dated 21.9.2015 passed by Ld. Civil Judge (Junior Division), Faridabad (at Page 26 of the paper book in CR-3913-2018) that Prem Kumar had put in appearance through counsel as fresh power of attorney was filed on behalf of defendant no.1/Prem



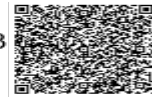
Kumar.

18.02.2016: Subsequently, as recorded in order dated 18.2.2016 (Annexure P-5), petitioner was also served through Munadi. However, as he failed to put an appearance, accordingly, vide impugned dated 18.2.2016 (Annexure P5), he was proceeded against exparte.

9.8.2016: Subsequently, as the defendants no.1 and 2 namely Prem Kumar and Renu Bhatia failed to appear despite Service, they were also proceeded against ex parte vide order dated 9.8.2016 (at page 34 of the paper book in CR-3913-2018). It is to be noted that up to 2.7.2016, the defendant no.1 Prem Kumar continued to be represented through counsel and matter was adjourned repeatedly to enable him to file written statement, which was not done till 2.7.2016.

16.3.2017: In order dated 16.3.2017 (Annexure P-8), the learned CJJD, Faridabad has duly recorded that defendants have not filed any objections to the application of the plaintiffs for passing the final decree. Accordingly, Local Commissioner was appointed for suggesting the mode of partition of the suit property as per the preliminary decree passed in the case.

5.4.2017: In the meantime, Prem Kumar sold his share of the suit property to one Joginder Singh; who moved an application under Order 1 Rule 10 CPC for impleading him as party to the suit - as so recorded in order dated 5.4.2017(Annexure P-9). However, subsequently, the said application came to be dismissed vide order dated 3.7.2017.



10.07.2017: As the petitioner as well as respondents no. 3 & 4 were proceeded exparte therefore, plaintiff-respondent no.1/Janak Bhatia made a statement that she is ready to purchase the suit property, which is duly recorded in the order dated 10.07.2017 (Annexure P-11).

05.12.2017: Vide order dated 05.12.2017 (Annexure P-14) Tehsildar, Faridabad was appointed as a Local Commissioner to assess the value of suit property as per the market rate.

26.2.2018: As recorded in order dated 26.2.2018 (Annexure P-15), report assessing the value suit property was received and fixed as Rs. 60 Lacs. Hence warrant of sale was issued as per schedule by the CJJD, Faridabad.

27.03.2018: It is at this stage that the Petitioner herein moved an application dated 27.3.2018 (Annexure P-16) for set aside the exparte order dated 18.02.2016 stating therein he was not duly served.

27.03.2018: Vide impugned order dated 27.3.2018 (Annexure P-18 - under challenge in CR-3913-2018), the abovesaid Application moved by petitioner was dismissed by the Ld. Civil Judge, Faridabad while giving categoric findings to the effect that he was duly served. It is so recorded in the said impugned order that petitioner Rajkumar has even admitted his signatures on the presence sheet in report of Local Commissioner.

10. Clearly, therefore, petitioner was aware of the pendency of the present execution petition/application for passing the final decree. As such, stand of the petitioner that he came to know about the pendency of the execution petition, only when he came to know about the auction proceeding was untrue and false.



11. It is further recorded in the order dated 27.3.2018, that *“The report regarding the sale of the suit property in open auction on 26.3.2018 is received from the Court auctioneer. As per the report, DH Janak Bhatia is the highest bidder and she purchased the suit for property for the sum of ₹61,80,000/-. She has given the cheque of amount of ₹15,45,000/- on the spot to the court auctioneer. The case is adjourned to 10.4.2018 for remaining payment by the DH.”*

09.07.2018: The record further reveals that thereafter the petitioner had filed objections against the auction of the suit property. The said objections were dismissed by the learned CJJD Faridabad vide impugned order dated 09.07.2018 (Annexure P-19 - under challenge in connected aforementioned CR-4973-2018); and sale in favour of the respondent no.1/Janak Bhatia herein was confirmed and the sale become absolute. Thereafter sale certificate as well as warrant of possession was also issued in favour of respondent no.1/Janak Bhatia.

12. A bare reading of the above facts amply establishes that the petitioner has egregiously misused the due process of law. A reading of the Order dated 09.07.2018 passed by learned CJJD/Faridabad shows that the objections have the petitioner have been correctly dismissed, which reads as under: -

“Vide this order of mine I shall dispose of two applications, one moved by JD no.3 Raj Kumar to set aside the sale of the suit property and for entertaining the objections moved by the said JD regarding auction sale of the suit property in favour of DH. The other application is moved



by the third party objector Joginder Singh to stop the payment of the share of JD Prem Kumar Bhatia to him from the proceeds of auction sale amount deposited by DH.

2. The JD Raj Kumar in his application submitted that as per the auction report the suit property was purchased by highest bidder DH Janak Bhatia for the sum of Rs.61,80,000/-. But the auction sale was irregular as the due procedure was not followed while conducting the sale. No court notice, spot notice and auction notice was given to the entrusted parties including the applicant. No open auction was conducted on 26.03.2018. On said date DH Janak Bhatia along with his sons and four other persons came at the suit property at 7:30 a.m. and they just taken the photographs of it and went back. The applicant has attached the affidavits of his neighbours to prove this fact along with the application. The court auctioneer in collusion with the DH has not made the open auction and accepted the bid of DH which is very much less from the market price of the suit property. The applicant has no other alternative accommodation except the suit property and he is also running a shop in it for his livelihood. His application to set aside the exparte proceedings has already been dismissed by the court on 27.03.2018 against which the applicant has filed the revision before the Hon'ble High Court which is pending for 30.07.2018. So the sale of the suit property be set aside in the interest of justice.

3. Notice of the application of JD Raj Kumar was given to the DH who filed the reply of it and denied any irregularity in proceedings of the auction sale. It is replied that the applicant Raj Kumar has concocted the false story and he has not filed any affidavit along with the present application to support it. The applicant has filed the objections after more



than three months from completion of the auction and objections are not maintainable.

4. *The another application is moved by third party objector Joginder Singh who submitted that he purchased the shop in the suit property from JD Prem Kumar and he has filed the civil suit for specific performance of agreement to sell dated 25.03.2002 and 17.02.2006 executed between the applicant and said Prem Kumar in the court of Dr. Ashok Kumar Id. Civil Judge (Sr. Divn) in which alienation of shop of Shri Prem Kumar Bhatia has been stayed vide order dated 16.08.2017. So the shop of said Prem Kumar Bhatia in the auction sale amount be not disbursed to him till the decision of the said civil suit.*

5. *The DH has not filed the formal reply of the said application of Joginder Singh and even consented for not releasing the share of Prem Kumar Bhatia in the auction sale amount.*

6. *I have heard the learned counsel for the parties who argued in the same line s of their pleadings. After hearing the and going through the case file very carefully and minutely, this court is of the view that applicant Raj Kumar has no merits in his objections filed in the case. The reasons for holding so are that no irregularity or fraud is found in the auction sale conducted in the matter) Court notice was issued on 21.03.2018 and on 22.03.2018 the spot notice was issued. It is reported in the auction report that Munadi was conducted through Baliff on 22.03.2018 and the date of auction was fixed as 26.03.2018. On 26.03.2018, the present applicant Raj Kumar Bhatia was very much present and his presence is duly marked. On 26.03.2018, 10 bidders including DH Janak Bhatia given the bid and on finding her highest bid of Rs.61,80,000/- she was declared as the purchaser of the*



suit property. These facts in the report suggests reasonably that the due procedure of the auction sale was adopted by the auctioner. So there is no irregularity or fraud in the auction sale as alleged in the objections by JD Raj Kumar Bhatia. Furthermore, the value of the suit property was get assessed from the Tehsildar before proceedings of the auction of the suit property. He suggested the approximately value of suit property of Rs.60,00,000/- As the bid given by the DH is more than fixed price, so it is wrongly to argued that the suit property was sold to DH at the price less than its market value. Besides this the proposition of law is that any person claiming vest in the property sold at the time of sale has the right to file the application to set ode the sale under Order 21 Rule 89 and Rule 90 of CPC. The grounds taken in the application in hand are of irregularity and fraud in the sale so the application is covered under Rule 90 of CPC which is reproduced herein below:

90. Application to set aside sale on ground of irregularity or fraud-- (1) Where any immovable property has been sold in execution of a decree, the decree holder or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

(2) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(3) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.



7. On reading of Rule 90 of CPC and the facts and circumstances of the case discussed above, the sale in favour of DH is not liable to be set aside as not irregularity or fraud in publishing of the court notice, spot notice etc. is made out. Hence, the application and objections filed by JD Raj Kumar are hereby dismissed. As far as the objections/applications filed by the third party objector Joginder Singh is concern, his earlier objections filed in the case have been dismissed vide order dated 15.11.2017 and appeal filed by him against the said order was also dismissed vide order dated 24.01.2018 passed by Shri Virender Malik, Ld. ASJ Faridabad. In the present application, he has not raised any objection regarding the sale in favour of DH but has only requested to stop the payment of share of JD Prem Kumar Bhatia in the sale proceeds. As the Civil suit against the share of JD Prem Kumar Bhatia is pending which is filed by the present applicant Joginder Singh, so the payment of share of Prem Kumar Bhatia in the sale proceed is stopped and be released after the decision of the civil suit. Accordingly, both the applications are disposed of and as no objections is remained to be adjudicated in the matter, so the sale in favour of the DH Janak Bhatia is hereby confirmed and the sale become absolute. Required sale certificate be issued in favour of DH specifying that the suit property is sold in favour of DH Janak Bhatia. The sale certificate shall bear the date of 09.07.2018 on which the sale become absolute. Warrants of possession of the suit property be issued in favour of DH and the JDs except Prem Kumar Bhatia are given liberty to get released their shares in the amount of the sale deposited by DH. To avoid any unnecessary objections and resistance at the time of execution of the warrants of possession in favour of DH, it



is ordered that the SHO of concerned police station will provide necessary police help at the time of execution of the warrants of possession.”

13. Learned counsel for the petitioner is unable to controvert or dispute the above said facts and findings as recorded in the impugned orders.

14. Clearly therefore, impugned orders suffer from no error. In view of the above discussion, both Civil Revision Petitions stand **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

13.03.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

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