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

CR-1264-2024 (O&M)

Date of decision: 11.03.2026

Gurmail Singh

...Petitioner

Versus

Sukhdev Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Manleen Kaur, Advocate for the petitioner.

Mr. P.S. Brar, Advocate for respondent No.1.

Mr. S.S. Sidhu, Advocate for respondent Nos.2 and 3.

VIKAS BAHL, J. (ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION:-

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 22.02.2024 (Annexure P-1) passed by the Additional Civil Judge (Senior Division), Faridkot, whereby an application filed by defendant Nos.2 and 3/respondent No.2 and 3 for striking off appearance of defendant No.1/petitioner as well as written statement filed by defendant No.1/petitioner has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONER:-

2. Learned Senior Counsel for the petitioner has submitted that in the present case, the petitioner is defendant No.1 in the suit and respondent No.1-Sukhdev Singh had filed a suit for possession by way of



specific performance of agreement to sell dated 26.03.2002. It is submitted that the present contesting respondent Nos.2 and 3 are defendant Nos.2 and 3, who as per their case, had sale deed dated 21.07.2003 in their favour from the present petitioner. It is submitted that since all the three defendants were proceeded against ex-parte, thus, an ex-parte judgment and decree dated 02.04.2008 was passed. It is further submitted that thereafter, defendant Nos.2 and 3/respondent Nos.2 and 3 filed an application under Order 9 Rule 13 CPC for setting aside the said ex-parte judgment and decree, which was dismissed by the trial Court but the appeal filed therefrom was allowed and it was specifically observed in para 14 of the order dated 17.07.2017 that the judgment and decree dated 02.04.2008 was set aside and the case was remanded to the trial Court, where both the parties were directed to appear.

3. It is submitted that since the entire judgment and decree dated 02.04.2008 was set aside, thus, the petitioner appeared and he was permitted to join the proceedings on 01.09.2023. It is further submitted that the petitioner did not appear on 06.09.2023 and was again proceeded against ex-parte but immediately thereafter, on 12.09.2023, the petitioner appeared through his counsel and he was again allowed to join the proceedings and ex-parte proceedings qua the petitioner were set aside and the petitioner was permitted to file written statement dated 12.09.2023 (Annexure P-7), which was duly filed by the petitioner and issues were framed. It is argued that none of the orders, more so, order dated 01.09.2023 as well as order dated 12.09.2023 were challenged by



any of the parties and thus, the same have attained finality.

4. It is submitted that the petitioner had cross-examined the witnesses of the plaintiff and had even tendered his affidavit as Ex.DW1/A when the application was filed by respondent Nos.2 and 3 to strike out the presence of the petitioner, as well as his written statement, his cross-examination of PW1 and his affidavit Ex.DW1/A. It is submitted that the said application has been illegally allowed vide impugned order. It is argued that it is a matter of settled law that the principle of resjudicata/constructive resjudicata even applies to orders passed in the same proceedings and once the petitioner was permitted to join the proceedings and file his written statement and the said order has attained finality, it does not lie in the mouth of defendant Nos.2 and 3 to subsequently file the said application.

5. It is also submitted that once a judgment and decree is set aside, then every party, more so, ones who are defendants, would have a right to participate in the proceedings. It is submitted that the application filed by defendant Nos.2 and 3 is not filed under any provision of law and is completely misconceived and passing of the impugned order on the said application has created an anomalous situation i.e., the decree with respect to specific performance is held to be binding upon defendant No.1, but not on defendant Nos.2 and 3, who are the purchasers from defendant No.1. It is submitted that as per the earlier decree dated 02.04.2008, defendant No.1 was required to execute the sale deed in pursuance of the agreement to sell in favour of the plaintiff and in case



the said decree qua the petitioner is permitted to stand, then, it is defendant Nos.2 and 3 who would also be prejudiced as in effect the said decree would also be binding on defendant Nos.2 and 3. It is argued that the plaintiff did not file any such application and thus, the application filed by co-defendants against defendant No.1 is not maintainable.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:-

6. Learned counsel for respondent Nos.2 and 3, who are the contesting respondents, has submitted that the petitioner and respondent No.1 have colluded with each other and after selling the property to defendant Nos.2 and 3 vide registered sale deed dated 21.07.2003, they have purposely forged and fabricated the agreement dated 26.03.2002. It is submitted that the said defence has been specifically taken in para 1 of the preliminary objections of the written statement filed by defendant Nos.2 and 3. It is submitted that thus, in case, the impugned order is to be set aside then defendant Nos.2 and 3 be permitted to raise the said defence during the course of trial, as taken in the written statement.

7. Learned counsel for respondent No.1-plaintiff has submitted that he is not necessary party for the purpose of adjudication of present revision petition as he had not filed any application before the trial Court for striking off the written statement, evidence etc. of the petitioner.

ANALYSIS AND FINDINGS:-

8. This Court has heard learned counsel for the parties and has perused the paper book and finds that the impugned order dated 22.02.2024 deserves to be set aside and the present revision petition



deserves to be allowed for the reasons stated hereinafter.

9. It is not in dispute that on 11.06.2005, respondent No.1- Sukhdev Singh had filed the suit for possession. The head note of the said suit is reproduced hereinbelow:-

*“Sukhdev Singh son of Nazar Singh son of Sham Singh,
resident of Talwandi Bhai, District Ferozepur.*

...Plaintiff

Versus

*1. Gurmail Singh son of Veer Singh son of Gajjan Singh,
resident of village Moran-wali, District Faridkot.*

2. Amarjit Singh,

*3. Karamjit Singh sons of Harnek Singh son of Damman
Singh,*

Both residents of village Moranwali, District Faridkot.

...Defendants

*Suit for possession by way of specific performance of
an agreement to sell dated **26.3.2002 executed by defendant
No.1 in favour of the present plaintiff**-regarding the land
measuring 16 Kanals out of khewat No.160, Khatauni
Nos.363 to 366, comprising khasra Nos.1221/2(6-16),
1221/1(9-4) as per description in the agreement to sell and
land comprising khasra Nos.1221/1(6-16) and 1221/2(9-4)
as per description in the revenue record i.e. jamabandi for
the year 1999-2000, on payment of the remaining sale
consideration of Rs.28,000/- after adjusting a sum of
Rs.2,42,000/- already paid by the plaintiff by way of earnest
money under the agreement to sell dated 26.3.2002.*

And

***for declaration that the sale deed dated 21.7.2003 alleged to
be executed by defendant No.1 in favour of the defendants***



No.2 and 3 regarding the land measuring 16 Kanals is illegal, null and void, ineffective and inoperative qua the rights of the plaintiff, with costs

And

In the alternative, suit for the recovery of Rs.2.70,000/- alongwith interest thereof upto date.”

A perusal of the above would show that the petitioner was impleaded as defendant No.1 and respondent Nos.2 and 3 herein were impleaded as defendant Nos.2 and 3 and the suit was filed on the basis of agreement to sell dated 26.03.2002 which as per the case of the plaintiff/respondent No.1 was executed by defendant No.1 in favour of the plaintiff. Challenge was made to the sale deed dated 21.07.2003 which defendant No.1 had executed in favour of defendant Nos.2 and 3.

10. Since all the three defendants were proceeded against ex-parte, the trial Court vide judgment and decree dated 02.04.2008 had decreed the suit of the plaintiff in the following terms:-

“8. Hence, the suit of the plaintiff succeeds and is hereby decreed ex parte with costs for specific performance of the agreement to sell dated 26.03.2002 for sale of land measuring 16 Kanals more fully detailed and described in the headnote of the plaint with the direction to the defendants to execute the regular sale deed in favour of the plaintiff within two months from today, failing which the plaintiff can get the same executed and registered through Court. The plaintiff is also directed to deposit the remaining sale consideration within fifteen days from today. Decree-sheet be prepared accordingly. The file be consigned to the record room.



*Pronounced in the open court
2nd April, 2008”*

11. Defendant No.1/petitioner along with defendant Nos.2 and 3 were directed to execute the sale deed in favour of the plaintiff within a period of two months. Defendant Nos.2 and 3/respondent Nos.2 and 3 thereafter filed an application under Order 9 Rule 13 CPC for setting aside the said judgment and decree dated 02.04.2008, which was dismissed by the trial Court vide judgment dated 23.12.2014. Appeal filed by defendant Nos.2 and 3/respondent Nos.2 and 3 against the said order was allowed on 17.07.2017 with the following observations:-

*“14. Therefore, in view of above discussion, the instant appeal filed by appellants-defendants Amarjit Singh and Karamjit Singh, is hereby allowed and the order dated 23.12.2014 under appeal qua them, is set-aside. **Consequently, judgment and decree dated 02.04.2008 is set aside and the case is remanded back to the learned Lower court/its successor Court, where both the parties are directed to appear on 08.08.2017. Appellants-defendants are directed to file their written statement on 08.08.2017, before the learned Lower court on the very same day. However, opposite party can file replication within week after filing the written-statement. Further, learned Lower court is directed to decide the matter afresh after giving three opportunities as per Order 17 CPC, to both the parties to lead their evidence. Lower court record be sent back along-with copy of this order. File of this court be consigned to the Record Room, Faridkot.***

Pronounced:



17.07.2017”

A perusal of the above would show that although the order dated 23.12.2014, which was order dismissing the application under Order 9 Rule 13 CPC, was set aside qua defendant Nos.2 and 3, as the said order was passed only in pursuance of the application filed by defendant Nos.2 and 3, but consequently in the appeal, the judgment and decree dated 02.04.2008 was set aside and the matter was remanded to the trial Court. Judgment and decree dated 02.04.2008 was not set aside only against defendant Nos.2 and 3 but was set aside entirely.

12. Subsequent to the passing of the order dated 17.07.2017, the petitioner, who was defendant No.1, also appeared in the proceedings and he was allowed to join the proceedings from the said stage. Zimni order dated 01.09.2023 in this regard is reproduced hereinbelow:-

“Present: Sh.H.S.Sekhon, Advocate counsel for the plaintiff.

Sh.K.K.Gupta, Advocate counsel for the defendant No.2 & 3.

Defendant No. 1 in person.

Today, Defendant No.1 appeared in person and he is allowed to join the proceedings from this stage. Sh.K.K.Gupta, Advocate filed power of attorney on behalf of defendant No.2 & 3.

Now, case is adjourned to 04.09.2023 for filing replication.

Dated. 01.09.2023

(Lavdeep Hundal)

ACJ(SD)/ Faridkot

(UID:PB0309)”



13. Thereafter, the petitioner was again proceeded against ex-parte vide order dated 06.09.2023 but immediately on the next date of hearing i.e., on 12.09.2023, the petitioner appeared through his counsel and he was again permitted to join the proceedings and ex-parte proceedings against him were set aside. Order dated 12.09.2023 is reproduced hereinbelow:-

“Present:- Sh.H.S.Sekhon, Advocate counsel for the plaintiff.

Sh.K.K. Gupta, Advocate counsel for the defendant No.2 & 3.

None for defendant No.1.

Application under Section 151 CPC on behalf of defendant No.1 for permission to file the written statement.

Today, Sh.Sandeep Khosla, Advocate appeared on behalf of defendant No.1 and filed power of attorney. The case at initial stage and defendant No.1 is allowed to join the proceedings. The exparte proceedings qua defendant No.1 is set aside. Now, case is adjourned to 13.09.2023 for filing written statement on behalf of defendant No.1.

Dated: 12.09.2023

(Lavdeep Hundal)

ACJ(SD)/ Faridkot

(UID:PB0309)”

14. The petitioner thereafter filed written statement dated 12.09.2023 which has been annexed as Annexure P-7 with the present revision petition and the issues were framed after considering the pleadings of all the parties on 13.09.2023. The petitioner even cross-examined witnesses of the plaintiff and further tendered his evidence as



Ex.DW1/A when defendant Nos.2 and 3 and not the plaintiff filed an application dated 20.11.2023 for striking off the presence of the petitioner/defendant No.1, his written statement, cross-examination conducted by him of PW1 and also his affidavit tendered as Ex.DW1/A, which application was allowed vide impugned order in spite of the fact that the said application was not referable to any provisions of law. It would be relevant to note that order dated 01.09.2023 as well as order dated 12.09.2023 and even further orders vide which the petitioner had cross-examined the witnesses of the plaintiff, were never challenged by any party, much less, defendant Nos.2 and 3 and thus, they have attained finality. It is a matter of settled law that principle of resjudicata/constructive resjudicata also applies to various stages in a proceeding and thus, effect of all the said orders cannot be nullified by virtue of moving an application subsequently without having specifically challenging those orders. It would also be relevant to note that the plaintiff has not filed any such application and it is defendant Nos.2 and 3 who have filed the application against co-defendant No.1 for removing his written statement etc.

15. Under the first proviso to Order 9 Rule 13 CPC, the Court is entitled to set aside ex-parte judgment and decree against all, more so, when the decree is of such a nature that it cannot be set aside against one defendant only. In the present case, it would be relevant to note that in case judgment and decree dated 02.04.2008 is held to be binding and final qua defendant No.1, then, it would create an anomalous situation



and the same would seriously prejudice the rights of even defendant Nos.2 and 3. Defendant Nos.2 and 3 are claiming registered sale deed from defendant No.1. In case, direction given in the earlier decree to the effect that defendant No.1 is to execute the sale deed in pursuance of agreement to sell dated 26.03.2002 in favour of the plaintiff is not set aside, then in execution proceedings, it would be the duty of defendant No.1 to execute the sale deed in favour of the plaintiff and in such a situation, defendant Nos.2 and 3 would not be able to effectively pray for dismissal of the suit.

16. The trial Court has committed grave error in not considering the abovesaid facts and circumstances while observing that the ex-parte decree against defendant No.1 was intact and while allowing the said application filed by defendant Nos.2 and 3 for striking out the presence of the petitioner, as well as his written statement, his cross-examination of PW1 and also his affidavit-Ex.DW1/A. Only in the presence of all the parties, effective adjudication can be done. Thus, the present revision petition is allowed and the impugned order dated 22.02.2024 is set aside and the application filed by defendant Nos.2 and 3 is dismissed.

17. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

11.03.2026

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No