

MALKIT SINGH v. SURJIT KAUR,(2022-1)205 PLR 473

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice H.S. Madaan.

MALKIT SINGH – Petitioner,

Versus

SURJIT KAUR – Respondent.

CR-2243-2021

Civil Procedure Code, 1908 (V of 1908) Order 9, Rule 13 – Setting aside ex parte judgment – Case that she happens to be a resident of Canada and the plaintiff had not given her correct address of that country resultantly, she was never served in that case, as such could not put in appearance when so summoned by the trial Court – There is not much delay in filing the application – The trial Court by analysing the stand taken by the contestants, in support of which they had led evidence, had found sufficient grounds to set aside the ex parte judgment and decree – Order upheld.

Mr. Navinder Jit Singh Dandiwal, for the petitioner.

H.S. Madaan, J. - (6th October, 2021) – Plaintiff Malkit Singh had brought a suit against defendant Surjit Kaur and two others seeking symbolic possession as owner by way of specific performance of agreement to sell dated 12.10.1992 said to have been entered into between defendant No.1 – Surjit Kaur through her attorney Balwinder Singh – defendant No.3 and her sister Mukhtiar Kaur with plaintiff on 12.10.1992 for 64 kanals 14 marlas of land situated at village Buraj Hamira, District Moga for Rs.6 lakhs, the sellers receiving the entire consideration amount. According to the plaintiff, in pursuance of the said agreement to sell, Mukhtiar Kaur had transferred her share in the said land i.e. measuring 32 kanals 07 marlas in favour of the plaintiff but defendant No.1 did not do so. As such he had brought the suit for symbolic possession as owner by specific performance of agreement to sell dated 12.10.1992 with consequential relief of permanent injunction restraining the defendants from alienating the land in question in any manner and from interfering in the peaceful, lawful and continuous possession of the plaintiff over it; in the alternative suing for recovery of Rs.3 lakhs along with interest and cost.

2. Notice of the Civil Suit bearing No.102/2016 was given to the defendants. On getting notice, defendant No.3 put in appearance, whereas defendants No.1 and 2 had not appeared and were proceeded against ex parte.

3. Issues on merits were framed. The parties were given opportunities to lead evidence.

Then the trial Court of Additional Civil Judge (Sr.Divn.), Nihal Singh Wala vide judgment dated 17.2.2018 had decreed the suit with regard to main relief of symbolic possession as owner by way of specific performance of agreement to sell granting time of three months to defendant No.1 to execute the sale deed in favour of the plaintiff as per terms and conditions of the agreement to sell and then get the sale deed registered in his favour. The suit was further decreed for the relief of permanent injunction restraining the defendant from interfering into peaceful, lawful and continuous possession of the plaintiff over the suit land forcibly, illegally, unjustly and without due course of law.

4. Subsequently, defendant No.1 Surjit Kaur moved an application under Order 9 Rule 13 CPC for setting aside of ex-parte judgment and decree dated 17.2.2018. In the said application, the defendant No.1 contended that she is a permanent resident of Canada; she was not served in the suit due to wrong address given in the plaint by the plaintiff; she came to know about the ex-parte decree on 5.3.2018 when she came to the Court complex for some other work and contacted her counsel, who applied for certified copy of judgment and decree dated 17.2.2018 on 6.3.2018, which were delivered on 13.3.2018. Therefore, the application was filed.

5. The application was resisted by the plaintiff contending that applicant/defendant No.1 had not appeared before the trial Court intentionally despite having knowledge of pendency of the said suit; she had also filed an application for partition of land before District Revenue Officer, Moga, wherein she had stated that plaintiff had already filed a civil suit, which was pending in the Court at Nihal Singh Wala. Therefore, no ground for setting aside of ex-parte judgment and decree qua defendant No.1 is made out.

6. Learned Additional Civil Judge (Sr.Divn.), Nihal Singh Wala had framed issues for proper adjudication of the controversy between the parties and afforded opportunities of leading evidence to them. Thereafter, vide detailed order dated 16.7.2021, he accepted the application and set aside the judgment and decree dated 17.2.2018 against such defendant No.1.

7. This order left the plaintiff aggrieved and he has filed the present civil revision petition praying that this order be set aside and application in question be dismissed.

8. I have heard the learned counsel for the petitioner besides going through the record.

9. Needless to say the Courts are there to do substantial justice between the parties, rather than adopting a hyper technical approach and in the process getting bogged down therewith. The rules of procedure are meant for advancing ends of justice and such rules are handmaid of justice. It is always desirable to decide a *lis* after hearing both the parties, rather than shutting doors of contest upon a party by adopting a very technical approach to the matter. When one party comes to the Court presenting his case, then for finding a clear picture with regard to the matter in question, version of the other party should also be there before the Court. If a matter is decided considering case of one party only then that may result in miscarriage of justice, which is uncalled for. The Court after getting the versions of the contestants may proceed to decide a *lis* in accordance with law. Here it is

specific case of defendant No.1 – Surjit Kaur that she happens to be a resident of Canada and the plaintiff had not given her correct address of that country resultantly, she was never served in that case, as such could not put in appearance when so summoned by the trial Court. There is not much delay in filing the application. The trial Court by analysing the stand taken by the contestants, in support of which they had led evidence, had found sufficient grounds to set aside the *ex parte* judgment and decree qua defendant No.1.

10. I find that the impugned order is well reasoned, which does not suffer from any illegality or infirmity and no interference therewith is called for while exercising jurisdiction under Article 227 of the Constitution of India.

11. Thus, finding no merit in the civil revision petition, the same stands dismissed. *R.M.S.* – *Petition dismissed.*