

(2013) 09 P&H CK 0448

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 5327 of 2012

Balwant Singh and
Another

APPELLANT

Vs

Saroj Kumari and
Others

RESPONDENT

Date of Decision: Sept. 20, 2013

Citation: (2014) 173 PLR 421

Hon'ble Judges: Laxmi Narain Mittal, J

Bench: Single Bench

Judgement

L.N. Mittal, J.

Plaintiffs have filed this revision petition under Article 227 of the Constitution of India impugning judgment dated 25.07.2012 Annexure P-15 passed by the lower Appellate Court. The case has checkered history. Petitioners filed suit in the year 1973 vide plaint Annexure P-1 against Saudagar Singh-defendant No. 1 (since deceased) and against respondent's No. 2 to 6 as defendants No. 2 to 6 the said suit was dismissed by the trial Court vide judgment and decree dated 19.06.1978. Plaintiffs filed regular first appeal No. 1569 of 1978 against judgment and decree of the trial Court. This Court allowed the said appeal vide judgment dated 10.12.1990 Annexure P-9 and after setting aside judgment and decree passed by the trial Court, remanded the matter to trial Court for fresh decision of issue No. 6. Thereafter the trial Court vide ex parte judgment and decree dated 28.11.1991 (Annexure P-10) decreed the suit.

2. Saroj Kumari-respondent No. 1 herein filed application Annexure P-12 under Order 9 Rule 13 read with Section 151 of the CPC (in short, CPC) for setting aside ex parte judgment and decree dated 28.11.1991 alleging that during pendency of the suit, Surjit Kaur-defendant No. 5 had sold the suit property to Manjit Singh vide sale deed dated 20.03.1978 and Manjit Singh further sold the suit property to applicant-respondent No. 1-Saroj Kumari vide sale deeds dated 20.10.2000 and

23.10.2000. The applicant-respondent No. 1 alleged that after remand of the suit by this Court, the defendants were not served and, therefore, ex parte judgment and decree dated 28.11.1991 are liable to be set aside.

3. The plaintiffs by filing reply Annexure P-13 controverted the averments of respondent No. 1 and also challenged her locus standi to file the application. Averments made in the application by respondent No. 1 were controverted by the plaintiffs.

4. Learned trial court vide order dated 28.02.2012 Annexure P-14 dismissed application Annexure P-12 filed by respondent No. 1. However, appeal against the said order preferred by respondent No. 1 has been allowed by learned Additional District Judge vide judgment dated 25.07.2012 Annexure P-15 and thereby ex parte judgment and decree dated 28.11.1991 have been set aside and trial Court has been directed to proceed with the suit afresh after giving opportunity to Saroj Kumari (respondent No. 1 herein) to become a party having stepped into the shoes of defendant No. 5-Surjit Kaur and to give opportunity to contest the suit. Feeling aggrieved, plaintiffs have filed this revision petition to challenge the said judgment Annexure P-15.

5. I have heard counsel for the parties and perused the case file.

6. Counsel for the petitioners vehemently contended that respondent No. 1 had no locus standi to file application Annexure P-12 for setting aside ex parte judgment and decree Annexure P-10. It was contended that sale deed by defendant No. 5 in favour of Manjit Singh was executed during pendency of the suit in violation of injunction order and therefore, the said sale deed is non est.

7. I have carefully considered the aforesaid contention. The same cannot be accepted for the purpose of this revision petition. Under Order 22 Rule 10 and Section 146 CPC, transferee pendente lite has right to continue, to prosecute or defend the suit by stepping into the shoes of the transferor. Consequently, it cannot be said that respondent No. 1 had no locus standi to file application Annexure P-12. On the contrary, respondent No. 1 having stepped into the shoes of defendant No. 5 (through Manjit Singh intermediary vendee) had locus standi to file application Annexure P-12.

8. Counsel for the petitioners next contended that there was no sufficient ground to set aside the ex parte judgment and decree Annexure P-10 and even application Annexure P-12 filed by respondent No. 1 was barred by limitation.

9. The aforesaid contention also cannot be accepted in the facts and circumstances of the instant case. After remand of the case by this Court vide judgment Annexure P-9, the trial Court issued notices to the defendants. Order dated 05.08.1991 passed by the trial Court, as reproduced in impugned judgment Annexure P-15, is reproduced hereunder:

Present : Shri J.K. Jain, Counsel for the plaintiffs

Defendants No. 2 and 4 already ex parte.

The remaining defendants have not been served. Summons received back unserved. The remaining defendants be summoned through munadi and affixation for 3.9.1991 on depositing munadi charges and PF.

Sd/-

SJJ/5.8.1991

10. Perusal thereof reveals that substituted service of unserved defendant No. 1, 3, 5 and 6 was ordered Without recording necessary satisfaction as required by Order 5 Rule 20 CPC i.e. to the effect that the said defendants were getting out of the way for the purpose of avoiding service or that for any other reason, the summons could not be served in the ordinary way. Thus the aforesaid order of the trial Court ordering substituted service of defendant No. 5-predecessor-in-interest of respondent No. 1 (besides some of the other defendants) is completely illegal and invalid. As a necessary corollary, the order of proceeding ex parte against defendant No. 5 pursuant to substituted service by Munadi was also illegal as there was no legal and valid service of defendant No. 5. In view thereof, there was sufficient ground for setting aside the ex parte judgment and decree although respondent No. 1 should have been burdened with costs. Also in view of the fact that there was no legal and valid service of defendant No. 5, application Annexure P-12 filed by respondent No. 1 cannot be said to be barred by limitation because the limitation period started from the date of knowledge of respondent No. 1 about the decree. Respondent No. 1 has pleaded in application Annexure P-12 that she got knowledge of the decree on 19.02.2001 only and she filed application Annexure P-12 on 20.02.2001 i.e. within limitation period of 30 days. Consequently, the application also cannot be said to be barred by limitation.

11. For the reasons aforesaid, I find no perversity, illegality or jurisdictional error in impugned judgment of the lower appellate Court so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India except regarding imposition of costs on respondent No. 1. Accordingly the instant revision petition is dismissed except to the extent that respondent No. 1 shall pay Rs. 15,000/- as costs precedent to the plaintiffs for setting aside of ex parte judgment and decree Annexure P-10.

12. Besides it, counsel for the petitioners/plaintiffs pointed out that this Court vide judgment Annexure P-9 remanded the case to trial Court fresh decision on issue No. 6 only. Accordingly it goes without saying that the trial Court shall proceed with the suit in accordance with judgment Annexure P-9.

13. Pending civil miscellaneous application, if any, is disposed of as infructuous. Parties are directed to appear before the trial Court on 24.10.2013.