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Court : Punjab and Haryana

Decided On : Jan-02-1996

Reported in : (1996)114PLR304

Judge : A.S. Nehra, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 9, Rule 13

Appeal No. : Civil Revision No. 242 of 1989

Appellant : Ram Parkash

Respondent : Jagdish Kumar

Advocate for Pet/Ap. : Arun Jain, Adv.

Disposition : Petition dismissed

Judgement :

A.S. Nehra, J.

1. This revision petition is directed against the order dated September 15, 1988, passed by the Additional Senior Sub Judge, Ropar, by which the application of the petitioner for setting aside the ex-parte order dated September 30, 1986, was dismissed.

2. Briefly stated, the facts of the case are that Jagdish Kumar, plaintiff-respondent, filed a suit for possession of the suit land on March 26, 1982, alleging that Narain Dass was previously the owner of the land in dispute and he had died on October 10, 1970, leaving behind no legal heir. Plaintiff respondent claimed himself to be the nephew of Narain Dass deceased. According to him, Narain Dass, deceased, had executed a Will dated December 27, 1.968, in his favour and, therefore, he was the exclusive owner of the suit property. It was further alleged in the plaint that the defendant-petitioner colluding with the Revenue authorities got mutation of suit land sanctioned in his favour in the year 1972, which was illegal and wrong. The defendant petitioner was summoned through registered post for May 11, 1982, but he refused to accept service. He was, therefore, served by publication in 'Daily Samaaj', Ludhiana, for August 4,1982. He did not appear in Court and was proceededex-parte.

3. After examining the witnesses produced by the plaintiff-respondent, an ex-partedecree was passed in favour of the plaintiff-respondent and against the defendant-petitioner on November 10, 1982. Thereafter possession of the suit land was taken by the plaintiff-respondent and mutation was sanctioned in his favour. The plaintiff-respondent then sold the suit property to Jagga Singh and Gurnam Singh for a sum of Rs. 80,000/-.

4. The defendant-petitioner filed an application on October 30, 1984 for setting aside the ex-parte judgment and decree dated November 10, 1982, wherein it was alleged that his address was not correctly given and he was not personally served and, therefore, he could not be proceeded againstex-parte. In that application, issues were framed and the defendant-petitioner was granted five opportunities to produce his evidence. He did not produce any evidence and was granted last opportunity for September 30,1986, on which date also he did not come present and his application for setting aside the ex-parte decree was dismissed.

5. On October 24, 1986, the defendant-petitioner filed an application for restoration of the previous application which was dismissed in default on September 30,1986, alleging that he was suffering from heart ailment and was advised rest by his doctor at Madras for a period of two months and was, therefore, unable to attend

the Court. It was further alleged in his application that he could not inform his counsel at Ropar and when the case was called, his counsel was busy in some court and, therefore, the absence of the counsel and the applicant was not intentional. Stating this, he prayed for restoration of his application, which was dismissed in default on September 30, 1986. That application was opposed on the ground that it was mala-fide and not maintainable. According to Jagdish Kumar, plaintiff- respondent, Ram Parkash, applicant, had been granted a number of opportunities to appear and lead evidence, but he had been seeking adjournments on one excuse or the other and was, therefore, granted last opportunity to produce his evidence at his own responsibility on September 30, 1986. On that date neither he nor his counsel appeared. The application was also stated to be not maintainable as it had neither been verified nor signed by the applicant or supported by an affidavit.

6. On the pleadings of the parties, following issues were framed:-

1. Whether there were sufficient grounds to restore the application? OPA

2. Relief.

The Additional Senior Sub Judge, Ropar after going through the evidence of the parties, came to be conclusion that the petitioner had not been able to make out sufficient grounds for restoration of the earlier application, which was dismissed on September 30,1986.

7. Learned counsel for the petitioner has contended before me that the petitioner could not attend the Court since he was suffering from heart ailment. The petitioner, in support of his contention, has relied upon a medical certificate, Ex. A 1, purported to be from a Private doctor of Madras. The petitioner has not examined the doctor. He was already granted five opportunities to lead evidence before his application for setting aside ex-parte judgment and decree dated 10.11.1.982 was dismissed on September 30, 1986. He, however, did not lead any evidence in spite of many opportunities having been granted to him. He did not appear in the witness-box even as his own witness. He did not summon any witness through court, nor did he take dasti summons. He even did not file list of

the witnesses to be examined by him in support of his contention. Therefore, the petitioner has not been able to make out a case for setting aside theex-parte order dated September 30, 1986, by which his restoration application for setting aside theex-parte judgment and decree dated November 10, 1982, had been dismissed.

In view of the above discussion, I find no merit in the revision petition and the same is dismissed.

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