
(2019) 11 MP CK 0262
In the Madhya Pradesh High Court
Case No : Civil Revision No. 441 Of 2018

Karan Singh (Deceased) Through

APPELLANT

Vs

Charu Grover & Others. And Ors

RESPONDENT

Date of Decision : 29-11-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 43 Rule 1, Order 9 Rule 13
Madhya Pradesh Land Revenue Code, 1959 — Section 32, 109, 110
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 22(2) (g)

Citation : (2019) 11 MP CK 0262

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Maqbool Ahmed Mansoori

Final Decision : Disposed Of

Judgement

1. The applicants/plaintiffs have filed the present revision being aggrieved by order dated 28.4.2018 passed by 4th Additional District Judge, Dewas whereby order dated 29.11.2016 passed by Civil Judge, Class-II, Dewas in MJC No.2/2016 dismissing an application filed under O-9,R-13 of CPC,has been set aside.

2. Facts of the case, in short, are as under :

(i) The applicant - Karan Singh being the plaintiff filed the civil suit for declaration of sale-deed dated 10.8.2011 as void and also for permanent injunction in respect of agricultural land bearing Survey No.505/2 area 0.506 Hect. situated in Village Jaitpura (hereinafter referred to as "the suit land"). During pendency of the suit, plaintiff - Karan Singh expired, therefore, present applicants were brought on record. According to plaintiff - Late Karan Singh, being an owner of the suit land his name was recorded in the revenue record. He came to know that the name of defendant No.1 has been mutated in the revenue record on the basis of sale-deed executed by defendant No.2 on the basis of Power of Attorney dated 29.4.2011. According to the plaintiff, by way of forgery,

defendants No.1 and 2 have got registered the forged sale-deed which is void and not binding on him.

(ii) In the suit, defendant No.1 was proceeded ex-parte as despite service of summons, she did not appear. Defendant No.2 contested the suit by filing the written statement. He admitted the Power of Attorney and execution of the sale-deed in favour of defendant No.1. On the basis of pleadings, learned trial Court framed 7 issues for adjudication. The parties examined their witnesses and vide judgment and decree dated 25.2.2016, learned trial Court has decreed the suit by declaring the sale-deed dated 10.8.2011 as void and directed the defendant No.1 not to alienate the suit land.

(iii) Being aggrieved by the aforesaid judgment and decree, defendant No.1 preferred an application under Order 9 Rule 13 of C.P.C. for setting aside the ex-parte judgment and decree. She contended that her correct name is Smt. Grover Charu W/o. Ved Prakash Grover and her address is 61, PNB Colony, Idgah Hills, Bhopal, whereas the summons were sent in the name of Charu Sirover W/o. Ved Prakash Sirover, 10, PNB Colony, Idgah Hills, Bhopal, therefore, the summons was not served on her correct and proper address. The notice which was published in the newspaper is not having wide circulation in the Bhopal city. She came to know about the judgment and decree after 15.1.2016 when she appeared on 2.2.2016 before the Tehsildar for filing an affidavit. Thereafter, she became sick from 3.2.2016 to 10.3.2016 and could not contact her lawyer thereafter she filed an application under O-9:R-13 of CPC on 21.3.2016.

(iv) The present applicants filed reply denying the averments made in the said application by submitting that notices were sent number of times by registered AD and despite receipt, she did not appear in the Court. She had a knowledge of ex-parte judgment and decree on 5.1.2016 when the plaintiff presented the sale-deed before the Tehsildar. She filed the Vakalatnama on 5.5.2016 in a proceeding u/s. 32 of the M.P. Land Revenue Code. She did not enter into the witness box in support of the facts mentioned in the MJC. Learned Civil Judge vide order dated 29.11.2016 dismissed the application.

(v) Thereafter, respondent/defendant No.1 preferred Misc. Appeal under Order 43 Rule 1 of C.P.C. and the learned Additional District Judge vide order dated 28.4.2018 has allowed the appeal and set aside the ex-parte judgement and decree. Hence, the present revision before this Court.

3. Despite notice, no one has appeared on behalf of respondent/defendant No.1.

4. Shri Mansoori, learned counsel appearing for the applicants, submits that the learned Addl. District Judge has erred in holding that defendant No.1 was not duly served in the proceedings of the civil suit. The application filed under Order 9 Rule 13 was barred by time and no application for condonation of delay was filed. The defendant No.1 was well aware about the pendency of the civil suit as she appeared in the proceedings before the Tehsildar. She did not enter into the witness box in support of her averments made in the MJC. Learned Addl. District

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That on 5/5/2014 applicants and defendant no.1 were present. In order dated 28.5.2015, the Tehsildar has observed that the civil suit is pending challenging the sale-deed executed in favour of defendant No.1 and fixed the case for final arguments. That on 5/1/2016 the applicants produced the copy of order granting temporary injunction. On 2/2/2016 the defendant no.1 objected by filling her affidavit. On 9/2/2016 she was cross-examined by the counsel of the applicants. Thereafter, the Tehsildar has dismissed the application for mutation vide order dated 30.3.2016. Therefore, in view of the above, the defendant No.1 had a knowledge of pendency of the civil suit against her much prior to 28.5.2015.

6. After dismissal of the application, respondent/defendant No.1 filed the application under Order 9 Rule 13 of C.P.C. on 21.3.2016. Learned Civil Judge as held that before the Tehsildar, defendant No.1 had the knowledge of pendency of the civil suit, but learned Addl. District Judge has presumed that only the lawyer of defendant No.1 had knowledge about the pendency of the suit and judgment and decree, but not to respondent No.1. If it is a case of defendant No.1 that her lawyer did not inform her and she had no personal knowledge of pendency of the civil suit and judgment and decree, then she was required to enter into witness box to give evidence to that effect. She did not enter into the witness box and despite that, learned Addl. District Judge has recorded the finding in her favour.

7. Defendant No.1 took an objection that in the suit, she was impleaded as Charu W/o. Ved Prakash Sirover, whereas her name is Charu Grover W/o. Ved Prakash Grover. There is only a mistake in the surname and it is not a case that because of said mistake, notice was returned un-served due to wrong mention of name and address. There is State amendment in Order 9 Rule 13 to the effect that if the defendant is having knowledge of pendency of the suit otherwise, then he cannot take a stand that there was irregularity in service of summons. Similar amendment has been brought in the Civil Procedure Code by the State of U.P. And which came for consideration in the case of Smt. Beena (supra).

8. In the case of Parimal (supra), the apex Court has held the Court shall not set aside the decree on mere irregularity in service of summons or in a case where defendant had a notice of the date and sufficient time to appear in the Court. The Legislature in its wisdom made the second proviso mandatory in nature. Thus, it is not permissible for the Court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso.

9. In the case of Sunil Poddar (supra), the apex Court has held as under :

"23. It is, therefore, clear that the legal position under the amended Code is not whether the defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order V of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether

he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the Court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiffs claim, he cannot put forward a ground of non service of summons for setting aside ex parte decree passed against him by invoking Rule 13 of Order IX of the Code. Since the said provision applies to Debt Recovery Tribunals and Appellate Tribunals under the Act in view of Section 22(2) (g) of the Act, both the Tribunals were right in observing that the ground raised by the appellants could not be upheld. It is not even contended by the appellants that though they had knowledge of the proceedings before the DRT, they had no sufficient time to appear and answer the claim of the plaintiff-bank and on that ground, ex parte order deserves to be set aside."

10. In the case of Mahanagar Telephone Nigam Ltd. (supra), it has been held that the party must approach Court with clean hands. If deliberate concealment of material facts and misleading statements made, the application is liable to be rejected.

11. In view of the above, the impugned order 28.4.2018 passed by learned Addl. District Judge, Dewas in Misc. Appeal No.2/2017 is unsustainable law and is liable to be and is hereby set aside. Resultantly, the application filed by respondent/defendant No.1 under Order 9 Rule 13 of C.P.C. is also rejected.

12. With the aforesaid, this revision stands disposed of. No order as to costs.