

(2013) 09 P&H CK 0216
In the Punjab And Haryana At Chandigarh
Case No : CR No. 5542 of 2013 (O and M)

Krishan Kumar and Another	Vs	APPELLANT
Hakam Singh and Others		RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2013) 09 P&H CK 0216

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Advocate : Arun Jindal, for the Appellant;

Judgement

L.N. Mittal, J.

CM No. 18826-CII of 2013

1. The application is allowed and Annexures P-1 to P-5 are taken on record subject to all just exceptions.

Main Case

Defendants no. 1 and 2 have filed this revision petition under Article 227 of the Constitution of India impugning order dated 19.08.2013 Annexure P-5 passed by the trial Court thereby dismissing application Annexure P-3 filed by petitioners for rejection of plaint Annexure P-2.

2. Respondents no. 1 to 3/plaintiffs have filed suit vide plaint annexure P-2 inter alia challenging ex parte judgment and decree dated 24.08.1992 on the ground of fraud etc.

3. Defendants no. 1 and 2/petitioners in their application Annexure P-3 alleged that defendants of the previous suit in which ex parte decree in question was passed, had earlier filed application for setting aside the ex parte decree and the said application was dismissed on 27.08.1999 and therefore, the instant separate

suit is not maintainable to challenge the said ex parte decree.

4. Plaintiffs by filing reply Annexure P-4 contested the application and controverted the averments made therein.

5. Learned trial court vide impugned order Annexure P-5 dismissed application Annexure P-3 filed by defendants no. 1 and 2 who have therefore, filed this revision petition to assail the said order.

6. I have heard counsel for the petitioners and perused the case file.

7. Counsel for the petitioners reiterated that since application for setting aside ex parte decree was filed and dismissed, instant suit to challenge the same ex parte decree is not maintainable. The contention cannot be accepted because admittedly plaintiffs no. 2 and 3 herein had not filed the said application for setting aside the ex parte decree in question and consequently on the aforesaid ground, they are not barred from filing the instant separate suit to challenge the said decree on the plea of fraud etc.

8. Counsel for the petitioners also contended that the suit is barred by limitation. However, no such plea has even been taken in application Annexure P-3. Even otherwise, in this case, the question of limitation is a mixed question of law and fact and can be adjudicated after giving opportunity of leading evidence to the parties and cannot be adjudicated upon summarily on the basis of contention of counsel for the petitioners and that too, without there even being an averment in this regard in application Annexure P-3. Resultantly, I find that the plaint is not liable to rejection at the threshold. There is, therefore, no perversity, illegality or jurisdictional error in impugned order of the trial Court so as to call for interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. The revision petition is devoid of substance and is accordingly dismissed in limine. However, nothing observed hereinbefore shall be construed as expression of opinion on merits of the suit and the petitioners shall be at liberty to raise all their pleas, in accordance with law, at appropriate stage.