

(2010) 08 P&H CK 0302
In the Punjab And Haryana At Chandigarh

Muni Devi

APPELLANT

Vs

Sushila and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 9 Rule 13, 24
Constitution of India, 1950 — Article 227

Citation : (2010) 08 P&H CK 0302

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—The epitome of the facts, relevant for disposal of the present revision petition and emanating from the record, is that originally, Muni Devi daughter of Hari Singh, petitioner-plaintiff (hereinafter to be referred as "the plaintiff") filed the suit against Devinder (since deceased), being represented by his legal representatives and others respondent-defendants (hereinafter to be referred as "the defendants") for a decree of possession by way of specific performance of the contract/agreement and alternatively, recovery of Rs. 2 lacs alongwith interest. The suit was decreed ex parte, vide judgment and decree dated 20.3.2006 by the Court of Civil Judge (Senior Division), Rohtak. The defendants filed an application for setting it aside, invoking the provisions of Order 9 Rule 13 CPC. On 15.5.2010, during the course of hearing of this application, it revealed that the exparte decree was passed by the then Civil Judge (Senior Division) and the application for setting aside the same was filed in the Court of Additional Civil Judge (Senior Division) and it ought to have been filed in the same Court.

2. Faced with this situation, the trial Court referred the matter to the District Judge with the request to transfer the present application to the same Court of Civil Judge (Senior Division), by virtue of reference order dated 22.5.2010.

3. The District Judge accepted the reference order of trial Court and transferred

the application under Order 9 Rule 13 CPC to the Court of Civil Judge (Senior Division), vide impugned order dated 31.5.2010 (Annexure P2), the operative part of which is as under:

After perusing the above referred authorities and hearing the Counsel for the parties, I find that the proper course for the trial Court was to return the plaint for being presented to the Court of the competent jurisdiction or to reject it, but the order having been passed and it is revisable only by the Hon'ble High Court, I find that in the interest of justice in order to avoid unnecessary delay in the litigation between the parties, the petition is transferred to the Court of Civil Judge (Senior Division), Rohtak in whose Court the application ought to have been filed. However, the question is left open as to whether the petition now transferred to the Court of Civil Judge (Senior Division), Rohtak shall be barred by limitation or not and it would only be taken to be a freshly instituted petition as on today and this matter shall be decided by the Court of Civil Judge (Senior Division), Rohtak after conclusion of the inquiry of proceedings under order 9 Rule 13 of the Code of Civil Procedure. The parties are to appear before the transferee Court after lunch break. File be sent immediately.

4. The petitioner-plaintiff did not feel satisfied with the impugned orders and filed the present revision petition.

5. Having heard the learned Counsel for the petitioner-plaintiff, having gone through the record with his valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the petition.

6. Ex-facie, the argument of learned Counsel for petitioner-plaintiff that the District Judge ought to have returned the reference to the same Court to decide the matter under Order 7 Rule 10 CPC but fell in error in transferring the application, is neither tenable nor the observations of this Court in cases Punjab Wakf Board (Now Haryana Wakf Board), Ambala Cantt. v. Gurudwara Mastgarh Sahib Committee (2010-3) P.L.R. 126; Prem Singh v. Government of Haryana and Anr. 1999 (1) CCC 688 and Hari Ram v. Anil Kumar AIR 1986 Punjab and Haryana 326 are at all applicable to the facts of this case.

7. In Punjab Wakf Board's case (supra), only the Wakf Tribunal constituted under the Wakf Act was competent to entertain and try the suit and not the civil Court. Sequently, in Hari Ram's case (supra), the defendant has raised the question of territorial jurisdiction of the Court at Hissar to entertain the two suits, which were pending adjudication before the Court. Likewise, in Prem Singh's case (supra), the Courts below decided the crucial issue in favour of plaintiff but dismissed the suit only on the ground of territorial jurisdiction. So, on the peculiar facts and circumstances of these cases, it was observed that "if the civil Court did not have the jurisdiction, including the territorial jurisdiction, to entertain and try the suit at the time of presentation of plaint, then the plaint could only be returned under Order 7 Rule 10 CPC to be presented in the appropriate Court and the District Judge has no power to transfer such suit while

exercising the powers u/s 24 CPC."

8. Possibly, no one can dispute with regard to the aforesaid observations, but since the provisions of Order 7 Rule 10 CPC pertained to the return of plaint in the main suit and "stricto sensu" are not applicable as such to the instant application, so, the same would not come to the rescue of the petitioner-plaintiff in this relevant connection.

9. As is evident from the record that the exparte decree was passed by the court of Civil Judge (Senior Division) and the application for setting it aside came to be heard by the Additional Civil Judge (Senior Division), who made the reference (on administrative side) to transfer the application to the same court. In the wake of the reference, the District Judge has transferred the application for setting aside the exparte decree to the same Court of Civil Judge (Senior Division), which passed the exparte decree, providing the liberty to the parties to raise all such legal objections of limitation etc. Therefore, it cannot possibly be saith that the petitioner-plaintiff is prejudiced in any manner in this relevant direction. In this view of the matter, no injustice has been caused to the petitioner-plaintiff, muchless manifest injustice, which would occasion this Court to interfere in the impugned orders. Such orders cannot possibly be set aside by this Court while exercising the limited revisional jurisdiction as contemplated under Article 227 of the Constitution of India, unless and until, the same are perverse and illegal. No such patent illegality or legal infirmity has been pointed out by the learned Counsel for the petitioner-plaintiff in the impugned orders.

10. No other legal point, worth consideration, has either been urged or pressed by the learned Counsel for the petitioner-plaintiff.

11. In the light of the aforesaid reasons, as there is no merit, therefore, the present petition is hereby dismissed.