



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3646-2019(O&M)

Date of Decision: January 07, 2025

Bimla Rani

...Petitioner

Versus

Ramandeep and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Abhay Gupta and Mr.Rohit Singla, Advocates
for the petitioners.

Mr.Jatin, Advocate for
Mr.Bhupinder Ghai, Advocate
for respondents No.1 and 3.

Respondents No.2, 4 and 5 proceeded against ex-parte.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 23.04.2019 passed by learned trial Court, whereby, an application filed for setting aside the ex-parte order dated 17.02.2014 was dismissed.

The facts germane, to be noticed, are as follows:-

That, initially, respondent No.2-Raman Kumar Sharma (who is plaintiff before learned trial Court) had filed a suit for seeking separate possession by way of partition by metes and bounds of the plot, as detailed in the headnote of the plaint, copy whereof is Annexure P-1. The petitioner

**CR-3646-2019****-2-**

(herein), who is mother of the plaintiff-Raman Kumar Sharma was impleaded as defendant No.3. However, during the pendency of the said suit, vide order dated 09.01.2014, copy whereof is Annexure P-3, the petitioner (defendant No.3) made appearance in person and had requested for adjournment for filing written statement as well as for engaging counsel and thereupon, the case was adjourned to 17.02.2014. However, on the next date, the petitioner-defendant No.3 did not make appearance and as such, she was proceeded against ex-parte vide order dated 17.02.2014, copy whereof is Annexure P-4. Thereupon, on 27.03.2019, an application was filed for setting aside of the ex-parte order dated 17.02.2014.

After securing reply, vide impugned order, the said application was dismissed.

Learned counsel for the parties heard.

The application filed for setting aside the ex-parte order dated 17.02.2014 is Annexure P-5. Perusal of the same reveals that plea had been taken by the petitioner-defendant No.3 that no legal and valid service has ever been effected upon her and that she was neither served through process server nor through registered post as well as through munadi. In fact, it is also stated that the petitioner was staying at Sharma Dental Hospital, Opposite Godrej Aadhar Bus stand Road, Machhiwara and no munadi was ever effected against her, at the said address. Therein also, it is stated that she came to know about the pendency of the suit from reliable resources on 26.03.2019 and after making enquiry, further, the application, as such, was filed.

**CR-3646-2019****-3-**

In reply, there was resistance shown for setting aside of the ex-parte order. In fact, it was pleaded that it was just to defeat the rights of defendant No.1 that the plaintiff is acting in collusion with defendant No.3. Also therein, it was stated about the present petitioner (who is defendant No.3) to be the mother of plaintiff-Raman Kumar Sharma and thus, the petitioner-defendant No.3 was having knowledge of pendency of the suit.

Perusal of the impugned order as well as perusal of the order dated 09.01.2014, which is placed on record as Annexure P-3, reveal that petitioner-Bimla Rani, who was impleaded as defendant No.3, had made appearance in the suit before trial Court on 09.01.2014 and had made a request for filing written statement as well as engaging a counsel. In the given circumstances, in any case, it cannot be said the petitioner was not served in the suit. But even if it be so, then also, the recitals with regard to the petitioner, having come to know about the pendency of the suit from reliable resources, is palpably wrong. In fact, the petitioner had made appearance and had sought adjournment for filing written statement and for engaging a counsel. However, on the next date i.e. 17.02.2014, she did not make appearance nor she had engaged a counsel for making appearance. Resultantly, she was proceed against ex-parte. This order was passed on 17.02.2014 and the application for setting aside the ex-parte order was filed on 27.03.2019, copy whereof is Annexure P-5. It is clearly after a period of five years, that said application was filed, which also counters the claim of the petitioner, for setting aside of the ex-parte order.

On further query by the Court, it is disclosed that case pending

**CR-3646-2019****-4-**

before the trial Court is fixed for evidence of the defendants. Learned counsel for respondents No.1 and 3 has also disclosed that five witnesses of the respondents-defendants have already been examined.

In the given circumstances, the setting aside of the ex-parte order dated 17.02.2014, shall amount to re-opening of the case and it shall not be in the interest of justice to do so. However, it is also observed herein that it is a suit for partition, pending between the parties. Even though, the petitioner-defendant No.3 has been proceeded against ex-parte, her interest shall be watched by the trial Court, while adjudicating the question of partition between the parties, more particularly, while looking at the revenue record, produced in evidence. Taking into consideration the same and also considering the averments made in the application, the revision petition sans merit and is hereby dismissed.

However, learned trial Court shall take into consideration the interest of the petitioner-defendant No.3. At this stage, learned counsel for the petitioner also submits that petitioner-defendant No.3 may be allowed to join the proceedings before learned trial Court. If the petitioner-defendant No.3, so desires, she may make appearance before learned trial Court and join the proceedings, at this stage.

January 07, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No