

Before Rajiv Narain Raina, J.

HARI SINGH—Petitioner

versus

DARSHAN SINGH AND OTHERS—Respondents

CR No. 1922 of 2014

March 13, 2014

Constitution of India, 1950 - Art. 227 - Supervisory jurisdiction - Mere errors of fact and law are not to be lightly interfered with unless they are palpably and demonstrably erroneous or completely absurd or suffer from what might occasion irremediable injury for which there is neither prophylactic nor an antidote.

Held, that mere errors of fact and law are not to be lightly interfered with in the present jurisdiction unless they are palpably and demonstrably erroneous or completely absurd as the laity might think or suffer from what might occasion irremediable injury for which there is neither prophylactic nor an antidote, only then intercession may be called for by the constitutional court to serve the ends of justice.

[Para 9]

Code of Civil Procedure, 1908 - O. 32 R. 9, O. 9 R. 7 - Change of guardian and setting aside the ex-parte proceedings against minors - During pendency of suit three minor children of deceased defendant brought on record - Arrayed through their father - Later proceeded ex-parte - Said father had re-married and the minors were being looked after by their grandmother - Application filed by her for being replaced as guardian - Application was resisted on the ground that plaintiff had examined all his witnesses and closed evidence - Trial Court allowed her to act as guardian for the limited purpose for contesting the suit - Another application for setting aside ex parte proceedings against minors also allowed - Held, hidden intricacies of law nor the vicious application of the technicalities of CPC should result in obstructing or deflecting the course of justice, which might impair forever the valuable right of a party to defend an action brought against it - Supreme interest of minor children would outweigh other

considerations - Suit still at stage of defendants' evidence - No prejudice would be caused to the plaintiff if suit is decided on merits - In fact justice has been put back on its rails.

Held, that neither the hidden interstices of the law nor the vicious application of the technicalities of the Code of Civil Procedure, 1908 should result in obstructing or deflecting the course of justice which might impair forever the valuable right of a party to defend an action brought against it in a court of law. The trial judge to my mind has balanced well the principles of justice, equity and good conscience in making the orders impugned. I am not sitting in appeal over the impugned orders, nor in erstwhile jurisdiction under s. 115 of the Code of Civil Procedure. I am here not confronted with the *fiat accompli* of a "...*case which has been decided*" at an interim stage of the trial. No injustice will be caused to the parties if the impugned orders are allowed to stand. In fact justice has been put back on its rails. The powerful but silent roar of the engine of justice has been re-fired and reignited by the trial judge. I would disdain from interfering for the sake of intervention in this matter to set about trying to correct something which is not found wrong.

In any event, the suit is still at the stage of defendants' evidence which has not started largely due to the time spent by the plaintiff in contesting the applications ending favourable to the interest of the minor respondent Nos.3 to 5. I fail to see any element of prejudice being caused to the plaintiff if the suit is allowed to be decided on its merits which course if adopted will leave no manner of doubt or any rancour between the parties of their respective rights which would be finally settled through the process of contest and adjudication, in case conciliation and mediation is not possible.

[Paras 10 and 11]

Yogesh Goyal, Advocate, *for the petitioner.*

RAJIV NARAIN RAINA, J.

(1) The challenge in this petition is by the plaintiff vendee to the orders dated 14th November, 2013 and 07th February, 2014 passed by the learned Civil Judge (Junior Division), Nabha in a suit for specific

performance of an agreement to sell property initially brought against Darshan Singh, the vendor. The first order disposed of an application under Order 32 Rule 9, CPC read with s.151 CPC for removal of Jagshir Singh as guardian of minors Komalpreet Kaur, Kiranpreet Kaur and Parminder Singh respondent Nos. 3 to 5. Sukhwinder Kaur was the mother of the three minor children and was arrayed as defendant No. 2 in the suit. She was the wife of Jagshir Singh. She died during the pendency of the suit. The plaintiff who is the petitioner in the present revision petition arrayed the three minor children through their father Jagshir Singh in the suit claiming possession of the disputed property on the death of the vendee, mother of the three minor children. The minor children were impleaded as legal representatives of late Sukhwinder Kaur. Jagshir Singh husband of late Sukhwinder Kaur re-married and the minors are said to have been left in a state of neglect since then, virtually abandoned by their father. They are stated to being nurtured by their grandmother Bant Kaur who looks after them and cares for their interest. Jagshir Singh appeared in Court and suffered a statement that he had contracted a second marriage after which his minor offspring from his first marriage reside with their grand mother and he has no objection if his name is replaced by Bant Kaur, the grandmother of the wards as guardian.

(2) The application was contested by the plaintiff on the ground that the father being a natural guardian, Bant Kaur should not be allowed to be brought in as a guardian to defend the action replacing Jagshir Singh. The trial Judge has allowed the application only for the limited purpose of allowing Bant Kaur to act as guardian in contesting the present suit till such time the minors attain majority. This has been done by the order dated 14th November, 2013. This is the first impugned order in this petition.

(3) The second order impugned is dated 07th February, 2014 passed by the same Court. The prayer in the second application was made under Order 9 Rule 7, CPC read with s.151 CPC for setting aside the *ex parte* order dated 05th September, 2008. It is not disputed that late Sukhwinder Kaur, defendant No. 2 was proceeded *ex parte* and thereafter she expired *lis pendens*. It was averred that Jagshir Singh father of the minors failed to watch the interest of the minor defendants claiming

through this first wife as he had remarried and was living separate from his children. The Court watched the interest of the minor children and impleaded Bant Kaur as the guardian for the purposes of the suit and for no other purpose.

(4) The plaintiff argues before this Court that late Sukhwinder Kaur was personally served on 12th September, 2009 through summons but did not appear in Court and was proceeded ex parte. The plaintiff had already examined all his witnesses and closed his *ex parte* evidence on 10th December, 2012. It was then that the present defendants through their father and natural guardian Jagshir Singh filed a joint application under Order 22 Rule 1, CPC for impleading the minors as heirs and legal representatives of defendant No. 2. That application was allowed on 25th January, 2012 and has attained finality. Jagshir Singh and his three minor children put in appearance in Court on 25th January, 2012. The plaintiff urges that after putting in appearance on 25th January, 2012 that newly added defendants did not move an application for setting aside the ex parte proceedings till the present application was filed after the limitation period prescribed had expired. It is contended that the minor applicants through their grandmother had filed the application under Order 32 Rule 9, CPC in collusion with Jagshir Singh to cover up bar of limitation. The result was achieved by Jagshir Singh consenting to the changeover to Bant Kaur in order to watch the interest of the children through *pairvi*.

(5) The plaintiff contested the application on a point of fact stating that there is no order dated 05th September, 2008 in existence on the judicial record proceeding ex parte Sukhwinder Kaur. The trial Court in the order records that the perusal of the case file revealed that Sukhwinder Kaur was arrayed as a party by order dated 05th May, 2009 and summons were issued to her but none appeared on behalf of defendant No. 2 and it was only then by order dated 12th September, 2009 she was proceeded ex parte and the case was fixed for evidence of the plaintiff. The application under Order 32 Rule 9, CPC was moved after the plaintiff had closed his evidence.

(6) It may be noted that the plaintiff brought the suit for specific performance of an agreement to sell the disputed property executed between him and Darshan Singh defendant No. 1. The agreement to sell

was registered. Earnest money is alleged to have passed. The vendor, however, backed out from the deal for which the suit was filed for enforcing the written contract and to compel execution of a sale deed transferring the suit property in the name of the plaintiff.

(7) Thereafter, it turned out that the position was materially altered when during the pendency of the suit, Darshan Singh transferred the property to the daughter-in-law of his brother through a registered sale deed. When this happened, the plaintiff made the vendees defendants in the suit and that is how Sukhwinder Kaur was arrayed initially as defendant No. 2 being the daughter-in-law of Darshan Singh's brother, and the transferee of the suit property.

(8) The rest of the story has been narrated above and deserves no repetition. The trial Court while allowing the application for setting aside the ex parte proceedings has recorded in her order dated 07th February, 2014 as follows:-

“Though they appeared in the present case through their father and natural guardian Jagsir Singh yet from the perusal of the case file it transpired that their interest was not properly watched by their father and natural guardian Jagsir Singh. It is the duty of the court to ensure proper and fair justice to all the parties to the suit. The minors cannot be allowed to be suffer due to the negligence or adverse interest of their father. When the minors were allowed to appear through their guardian Bant Kaur then the present application was moved with immediate effect for setting aside the ex parte proceedings. There is no delay and laches on the part of the guardian of the minors as such the present application for setting aside the ex parte proceedings against the minors defendants is hereby allowed.”

(9) The reasons recorded by the trial Court in reaching the conclusions arrived at in passing the impugned orders dated 14th November, 2013 and 07th February, 2014 cannot be said to be perverse, unreasonable or in error of jurisdiction. The supreme interest of the minor children has prevailed in the head and heart of the trial Judge at Nabha and outweighed other considerations. I would happily endorse those reasons as unexceptionable and not open to unwarranted interference

in the limited supervisory jurisdiction exercised by this Court under Article 227 of the Constitution to keep subordinate courts within the bounds of their jurisdiction. Mere errors of fact and law are not to be lightly interfered with in the present jurisdiction unless they are palpably and demonstrably erroneous or completely absurd as the laity might think or suffer from what might occasion irremediable injury for which there is neither prophylactic nor an antidote, only then intercession may be called for by the constitutional court to serve the ends of justice.

(10) Neither the hidden interstices of the law nor the vicious application of the technicalities of the Code of Civil Procedure, 1908 should result in obstructing or deflecting the course of justice which might impair forever the valuable right of a party to defend an action brought against it in a court of law. The trial judge to my mind has balanced well the principles of justice, equity and good conscience in making the orders impugned. I am not sitting in appeal over the impugned orders, nor in erstwhile jurisdiction under s. 115 of the Code of Civil Procedure. I am here not confronted with the *fiat accompli* of a “...case which has been decided” at an interim stage of the trial. No injustice will be caused to the parties if the impugned orders are allowed to stand. In fact justice has been put back on its rails. The powerful but silent roar of the engine of justice has been re-fired and reignited by the trial judge. I would disdain from interfering for the sake of intervention in this matter to set about trying to correct something which is not found wrong. I appreciate the words of the trial judge when she records; “...It is the duty of the court to ensure proper and fair justice to all the parties to the suit. The minors cannot be allowed to suffer due to the negligence or adverse interest of their father”. This is good thinking.

(11) In any event, the suit is still at the stage of defendants’ evidence which has not started largely due to the time spent by the plaintiff in contesting the applications ending favourable to the interest of the minor respondent Nos. 3 to 5. I fail to see any element of prejudice being caused to the plaintiff if the suit is allowed to be decided on its merits which course if adopted will leave no manner of doubt or any rancour between the parties of their respective rights which would be finally settled through the process of contest and adjudication, in case conciliation and mediation is not possible, which possibility I have no

doubt the trial judge can explore in terms of s. 89 of the Code. It has oft been said that: Husband justice and ye shall garner peace.

(12) The petition fails and is ordered to stand dismissed *in limine*.

(13) All the natural consequences will flow.

(14) Let a copy of this order be sent to the trial judge that passed the orders by the office in hard copy and by e-mail for her record and encouragement in the future.

PS Bajwa

Before Rameshwar Singh Malik, J.

GYAN PARKASH AND OTHERS—Appellants

versus

BHATI DEVI AND OTHERS—Respondents

RSA No. 125 of 2007

January 30, 2014

Specific Relief Act, 1963 - S. 34 - Declaration for possession - Dholidar Land - True owner created suit land as Dholi Land in lieu of services to be rendered by Dholidar - Plaintiff's predecessor and father of defendants were given possession - It was alleged that after death of plaintiff's predecessor, defendant's father got only his name incorporated in revenue record - Suit was filed for possession - Held, that Dholidar is only a licensee - Functions and duties as Dholi were no more performed by plaintiff or defendants - Thus, they had been left with no interest in suit property - They had no locus standi - Further, prior to filing of suit, defendants had raised construction several times, but same was never challenged - Furthermore, father of defendants was in continuous, uninterrupted and physical possession of suit land - No cause of action available to plaintiff - By doing nothing for 26 years, plaintiff had lost his right to contest.

Held that Dholidar is only a licensee and not the owner of the property given to him in Dholi. Dholi is always created in favour of Dholidar by the true owner in lieu of services rendered by the Dholidar.

(Para 10)