

**04.09.2017**

Present : Plaintiff with Id. Counsel.

All the defendants are exparte.

Sh. Yashpal Singh, Id. Counsel for defendants no. 3 & 4.

Matter is fixed today for consideration on application U/o 9 R 7 CPC filed on behalf of defendant no. 3 & 4. Id. Counsel for plaintiff does not want to file any formal reply.

Arguments heard. I have carefully perused the record in light of submissions made before me.

On perusal of record, it is revealed that the present suit was filed on 06.11.2009 and summons were duly served on all the 6 defendants. Initially defendant no. 3 was proceeded against exparte vide order dated 21.11.2009 and on that date, an interim order was passed by the Id. Predecessor thereby restraining the defendants no. 2, 3 & 4 from creating any third party interest in property bearing khasra no. 705 (0-8) & 703 (1-6) in village Alipur to the extent of 1/14 share. Thereafter vide order dated 01.04.2010 the exparte order dated 21.11.2009 (qua defendant no. 3) was set aside. Thereafter, vide order dated 01.06.2010 the defendant no. 2 was proceeded against exparte. The defendant no. 1 & 3 to 6 were

duly represented by the counsel. Then on 19.11.2010, the defendant no. 1 & 3 to 6 were also proceeded against exparte and the matter was fixed for exparte PE.

Thereafter on 18.12.2010 the exparte order dated 19.11.2010 was set aside subject to cost of Rs.2500/- payable by the defendant no. 1 & 3 to 6. On 18.01.2011 the above mentioned defendants were again treated exparte as cost was not paid. On same date, one application U/o 1 R 10 CPC filed by one Laxmi Devi was allowed and she was impleaded as defendant no. 7. Subsequently there was a compromise between plaintiff and defendant no. 7 on 19.02.2011 and it seems that due to this reason the defendant no. 7 also stopped appearing, though there is no specific order for proceeding exparte against her. The exparte PE was ultimately closed on 21.07.2012 and the matter was put for exparte final arguments. On the same stage, the matter was dismissed in default on 02.07.2014.

An application U/o 9 R 9 CPC was filed by plaintiff for restoration of suit. Notice of the said application was sent to all the defendants. On 11.08.2015, appearance was made by defendant no. 1, 5 & 6 and the other defendants including the present applicants were again proceeded against exparte. On the same date, the suit was restored. Thereafter the matter remained listed for exparte final arguments on several dates. On 12.04.2017 the present application was filed on behalf of defendants no. 3 & 4.

By way of present application, it is submitted that the previous counsel of the applicants Sh. A.K. Sehrawat, Advocate never informed the applicant about the exparte order dated 19.11.2010. Further that earlier the matter was settled

between the parties in February 2011 with the interventions of the elders and the plaintiff assured that she will withdraw the present case. Further that as per settlement the plaintiff moved an application for vacating the interim order and the defendant no. 3 & 4 paid sum of Rs.14,00,000/- to Smt. Laxmi Devi (defendant no. 7) who executed title documents in respect of one plot measuring 200 square yards which was purchased by her from the applicants. Further that the applicants were under the impression that the matter has been settled and the plaintiff might have withdrawn the present suit. Further that on 10.03.2017 when the defendant no. 3 went to the house of his younger sister i.e. defendant no. 5 on the festival of Holi, he was informed that the suit is still pending and they have received summons from the court and they also went to the court on 11.08.2015. It is stated that non-appearance of the applicants was not intentional. It is prayed that the exparte order dated 19.11.2010 be set aside.

Ld. Counsel for plaintiff has controverted the present application and argued that the application is baseless and time barred. Further that the application has been filed at this belated stage just to harass the plaintiff and the same does not disclose any sufficient cause or ground for setting aside the exparte order.

On careful perusal of the record in light of submissions made on behalf of parties, it is revealed that the present application lacks merits. The conduct on behalf of applicants has never been appreciable from the very inception of the proceedings. The applicant no. 1 i.e. defendant no. 3 has been actually proceeded against exparte on four different occasions i.e. 21.11.2009, 19.11.2010, 18.01.2011

& lastly on 11.08.2015. Almost similar is the status of the applicant no. 2 i.e. defendant no. 4. It is clear from the record that the applicants were duly served with the summons of the suit and even appearance was also made by them/on their behalf on different dates till 19.11.2010 when they applicants were proceeded against exparte alongwith defendant no. 1, 5 & 6. Not only this, on their application, the exparte order dated 19.11.2010 was set aside subject to payment of cost which was not paid by them and they were again treated as exparte on 18.01.2011. Even after 18.01.2011, the matter remained listed on different dates till 02.07.2014 when the same was dismissed in default but no effort was made by the applicants during this period to join the proceedings. The applicants cannot avoid their responsibility by blaming the previous counsel. The applicants were duly served with notice of application U/o 9 R 9 CPC but they opted not to appear before the Court. Further it is very strange that the sister of the applicant i.e. defendant no. 5 appeared before the court on 11.08.2015 but did not inform the applicants about the pendency of the suit till 10.03.2017 on which date the applicants claim to have knowledge about the pendency of the suit. The contents of the application, particularly regarding the date of knowledge, seem to be false and unbelievable on the face of it. Further the applicants are referring to a settlement between the parties but there is no corroborative material to show any such settlement between the parties. The Court record reflects only about one settlement between the plaintiff and defendant no. 7 but the same is not related to the present applicants. So, the contention regarding settlement also cannot be given much importance in absence of any corroborative

material.

Any of the contentions made on behalf of the applicants does not inspire confidence and it seems that the applicants are trying to conceal some facts for maintaining the present application. It is clear from the record that the applicants are aware about the proceedings of the case from the very inception and they have stopped appearing on their own out of their sweet will for the reasons best known to them. The present application seems to have been filed without any basis and without any sufficient ground at this belated stage, with a view to frustrate the case of the plaintiff.

In view of above discussion, present application is found to be devoid of merits and the same is accordingly dismissed.

Now to come up for exparte final arguments on **18.11.2017**.

**( Sanjay Jindal )**  
**ADJ-02 ( North ), Rohini, Delhi.**  
**04.09.2017(pk)**