

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CR No.129 of 2015

Date of Decision:-15.01.2015

Mehar Chand & Ors

.....Petitioners.

Versus

Yogesh Kumar & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Kanwaljit Singh, Senior Advocate assisted by
Ms. Gurdeep Kaur, Advocate for the Petitioners.

JASWANT SINGH, J.(ORAL)

Petitioners/Plaintiffs are in revision aggrieved against the order dated 29.08.2014 (P-5) passed by the learned Civil Judge(Jr. Divn.), Faridabad whereby the defendants/respondents application under Order 9 Rules 13 CPC for setting aside the ex-parte order dated 4.6.2008 and consequent judgment and decree dated 22.09.2010 has been allowed. Vide the said order the defendants/respondents have been permitted to join the proceedings from the date from which they were proceeded ex-parte.

Learned Counsel for the petitioners has argued that the conduct of the defendants is not bona fide as none of them have come to challenge ex-parte judgment and decree dated 22.09.2010 and it is only their alleged General Power of Attorney who has filed application under Order 9 Rule 13 CPC.

After hearing learned Counsel for the petitioner and perusing the paper book, this Court is of the considered view that the present petition is devoid of any merit and the same deserves to be dismissed.

In the present case, the plaintiffs have filed a suit for declaration with consequential relief of permanent injunction to the effect that they have become the owners of the property in question by virtue of occupancy rights as envisaged under Section 5 of the Punjab Tenancy Act. It is not in dispute that the defendants/respondents have alleged that they were never served in the proceedings and as soon as they came to know about the said judgment and decree dated 22.09.2010, they moved the application for setting aside the ex-parte judgment and decree as well as the order. It is further not in dispute that in the present case the defendants/respondents were never served through ordinary process. A perusal of the record reveals that vide order dated 5.9.2007, the petitioners/plaintiffs were directed to serve the notice upon the defendants for 10.10.2007 on filing of PF/RC. It was also directed that notice be also given if so required. However, the petitioners never served the applicants by way of ordinary process. It is further apparent from the record that neither process server was examined nor the report regarding refusal of the dasti summons has been brought on record which according to the mind of this court should have been the main plank of the argument. In these circumstances the assertions of the petitioners that they had been properly served is devoid of any merit. As far as the argument that the ex-parte judgment and decree was challenged by the power of attorney holder, this Court is of opinion that this is no argument for setting aside the impugned judgment and decree. It is apparent that the nature of the suit is such that it

has to be presumed that the defendants had to be serious to file the case.

The facts and circumstances as discussed above lead to a presumption that the defendants/respondents were not served properly because the nature of the suit is such that no prudent man would desire to lose his ownership to a tenant without without a proper contest.

In view of the above, finding no merit in the present revision petition the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

January 15, 2015
Vinay