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

CR No.3125 of 2015 (O&M)

Date of decision: May 08, 2015

Ghasi Ram and others

.....Petitioners

Versus

Smt. Bharpai and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Anil Ghanghas, Advocate
for the petitioners.

SABINA, J

Petitioners have filed this petition challenging the orders dated 07.04.2010 and 09.04.2011.

I have heard learned counsel for the petitioners and have gone through the record available on the file carefully.

Prabhu (since deceased) had filed suit for partition. Preliminary decree was passed in *ex parte* against the petitioners on 11.12.1997 and final decree was passed on 23.07.2002. Petitioners were proceeded *ex parte* in both the proceedings. Petitioners filed an application for setting aside the *ex parte* proceedings against them under Order 9 Rule 13 of the Code of Criminal Procedure, 1908 ('CPC' for short) in the year 2003. The case of the petitioners was that they had not received any summons from the Court qua pendency of the partition proceedings against them. The petitioners came to know about the *ex parte* decrees for the first time on 25.05.2003, when they wanted to raise construction on a portion of khasra No.192 and the decree-holder made a complaint to the police in this regard. Trial Court while dismissing the application moved by the

petitioners has held that the petitioners had been duly served through publication in daily newspaper Dainik Chetna before the passing of the preliminary decree as well as the final decree. The case of the petitioners was that they were residing in Adampur for the last 50 years and had not visited village Sidhan during the said period. The learned trial Court rightly held that there was no substance in the argument raised by the petitioners that newspaper Dainik Chetna had not circulation in district Hisar as no evidence had been led on record in this regard. As per the report of the process server, the notices issued to the petitioners were received back with the reports that they were not residing in village Sidhan. In these circumstances, the learned trial Court was left with no other alternative, but to effect service on the petitioners through publication in the newspaper. Since the petitioners had failed to appear before the Court despite their service through publication, the Courts below rightly held that the application moved by the petitioners under Order 9 Rule 13 CPC was liable to be dismissed.

No ground for interference by this Court, is made out.

Dismissed.

**(SABINA)
JUDGE**

May 08, 2015
m.singh