

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

**CR No.6326 of 2010 (O&M)
Date of decision: 07.12.2015**

Balkar Singh and another

....Petitioners

Versus

Krishan and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Rajesh Singh Kakkar, Advocate
for the petitioners.

Mr. Vikram Singh, Advocate
for Mr. M.K. Singla, Advocate
for the respondents.

RITU BAHRI J. (Oral)

The petitioner has come up in revision against the orders dated 27.04.2009, passed by Civil Judge (Jr. Division), Karnal and the order dated 17.08.2010, passed by Additional District Judge, Karnal, whereby application for setting-aside the ex parte order dated 26.07.1994 and ex parte judgment and decree dated 19.05.1999, have been dismissed.

The plaintiff had filed a suit for declaration with consequential relief of permanent injunction against the defendants. Defendants No.2 and 4 were not served and they were proceeded against ex parte vide order dated 25.11.1993 and

26.07.1994. Thereafter, the ex parte judgment and decree dated 19.05.1999, was passed in favour of the plaintiff and against the defendants.

The defendants No.2 and 4 filed an application under Order 9 Rule 13 read with Section 151 CPC, for setting-aside the ex parte judgment and decree dated 19.05.1999.

Upon notice, the respondents-plaintiffs filed their reply and took the objections that it was barred by the law of limitation on merits. It was denied that the plaintiffs procured a false and fabricated report through Process Server. The defendants did not appear in the Court despite service and as such, they were proceeded against ex parte.

From the pleadings of the parties, following Issues were framed:-

- 1. Whether the ex parte order dated 25.11.1993 and ex parte order dated 26.07.1994 and ex parte judgment and decree dated 19.05.1999, are liable to be set aside as prayed for? OPA.***
- 2. Whether the application is not maintainable? OPR.***
- 3. Whether the application is time barred? OPR.***
- 4. Whether the applicants have concealed the true and material facts from this Court? OPR.***
- 5. Relief.***

The trial Court on Issue No.1 has perused the certified copies of the orders dated 25.11.1993 and 26.07.1994, which

revealed that defendant No.4 was served and munadi was effected against defendant No.2, but both of them fail to appear before the Court. AW-3-Kishan Ram, who is the Chowkidar of the village Dachar stated that he did not effect munadi against defendant No.2 but from the testimony of AW-1-Gurdeep Singh, it became evident that there are two Chowkidars in village Dachar, one Parkash and the other is Kishan Ram. The trial Court on Issue No.1 has returned the finding that as per the record, munadi had been effected upon defendants No.2 and 4 and it could have been effected by Chowkidar-Parkash. The ex parte decree passed in the year 1999, has been challenged by defendants No.2 and 4, in the year 2006 and the trial Court held that there was no sufficient explanation for the delay and mere oral assertion of the applicants/defendants No.2 and 4 that they were not served was not sufficient for setting-aside the ex parte judgment and decree.

On Issue Nos.2 to 4, the trial Court has held that no evidence has been led by the defendants to show that how they came to know about the decree dated 18.07.2006. No application under Section 5 of the Limitation Act with the application under Order 9 Rule 13 CPC has been filed. Thus, the Issue Nos.2 to 4 are decided against the applicants/defendants No.2 and 4.

On appeal, the findings recorded by the trial Court have been affirmed and the zimini orders dated 25.11.1993 and 26.07.1994 has also been affirmed. The zimini order dated

26.07.1994, is reproduced as under:-

***“Present : Sh. Ashok Kapoor, counsel for the
plaintiffs.***

***Sh. Jagit Singh, counsel for defendant
No.3.***

Defendant No.4 already ex parte.

***Munadi against defendant No.1 not
deposited by the plaintiffs. Now the same be
deposited and defendant No.1 be summoned again
through munadi by beat of drum and affixation for
3.9.94. Munadi against defendant No.2 has been
effected. None has come on behalf of defendant
No.2. Case called several times. It is now 2.30 p.m.
So, the defendant No.2 is proceeded against ex
parte.”***

A perusal of the aforesaid order shows that munadi service had been effected upon defendant No.2-Balkar Singh. It is further observed that the defendant could not take any benefit of the wrong name mentioned as 27.07.1994 on the date of issue of summons and wrong name of Balkar Singh as Balbir Singh on the report. Moreover, as per Order 39 Rule 3 CPC, registered Ads were sent to Balkar Singh and Angrez Singh along with complainant immediately after order dated 04.11.1993.

Both the Courts below have rightly dismissed the application filed under Order 9 Rule 13 CPC by observing that service through munadi and even by issuing registered Ads under Order 39 Rule 3 CPC upon defendants No.2 and 4 has been effected, but they did not chose to appear before the Court and

were proceeded against ex parte.

There was no ground to allow the application under Order 9 Rule 13 as it was filed in the year 2006 without explaining sufficient cause for setting-aside the ex parte judgment and decree. This Court in “*Chaman Lal and another vs Jangsher Singh*”, in Civil Revision No.5106 of 2015, decided on 30.11.2015, on the similar facts has dismissed the revision petition.

So, keeping in view the above facts and circumstances, no ground for interference is made out.

Dismissed.

(RITU BAHRI)
JUDGE

07.12.2015

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