

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 7502 of 2014

Date of Decision: August 3, 2015

Dalbir Singh

.....Petitioner

Vs.

Gurmej Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Manuj Nagrath, Advocate
for the petitioner.

Mrs. R.K. Thind, Advocate
for the respondents.

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M.M.S. BEDI, J.

Plaintiff has preferred this revision petition against the order passed by the lower Appellate Court dated September 3, 2014 whereby the application filed by the defendant- respondents under Order 9 Rule 13 CPC read with Section 151 CPC for setting aside ex-parte judgment and decree dated September 2, 1998 has been allowed and the order dated October 31, 2011 passed by Civil Judge (Junior Division), Amritsar dismissing the said application has been set aside.

The plaintiff- petitioner had filed a suit for declaration claiming ownership and possession of the land mentioned in the heading of the plaint on the basis of registered Will besides claiming right to receive compensation of the property in dispute from the office of Land Acquisition Collector by filing a suit on February 10, 1994. The defendant- respondents after having not been served in ordinary way were summoned through affixation and munadi for September 13, 1994. On November 29, 1995, the respondents were proceeded against ex-parte by the Court. Suit of the plaintiff- petitioner for declaration was decreed on September 2, 1998. The defendant- respondents filed an application under Order 9 Rule 13 CPC after a gap of 8 years claiming that they had not been served. The trial Court dismissed the application under Order 9 Rule 13 CPC observing that the defendants had deliberately avoided appearance after having been duly served and had not explained each days delay or cause which prevented them from appearance in the proceedings. The lower Appellate Court has set aside the order passed by the trial Court and set aside the ex-parte judgment and decree dated September 2, 1998 and directed the parties to appear before the trial Court for filing written statement and for adjudication of the case in accordance with law.

Mr. Manuj Nagrath, learned counsel for the petitioner has vehemently contended that the plaintiff- petitioner had obtained an ex-parte decree against the defendant- respondents who are his real sisters. They had actually been served and had knowledge about the pendency of the case. He

had drawn the attention of the Court to the statement of Process Server AW5 who proved the service of defendant- respondents by munadi. He urged that the delay in filing of the application under Order 9 Rule 13 CPC should be considered fatal to the defendant- respondents and that the defendant- respondents should not be permitted to re-agitate the matter with an objective to harass the petitioner.

I have heard learned counsel for the petitioner. The lower Appellate Court while permitting the defendant- respondents to contest the suit on merits by setting aside the ex-parte decree has observed that initially the summons issued to the respondents had been received back with the report dated February 21, 1994 by Hazara Lal, Process Server that no person by the name of Joginder Kaur, Gurmej Kaur and Jeon Kaur were residing in the village. On August 6, 1994 registered covers have been sent but these were also not delivered and received back with the report regarding address being incorrect. It was thereafter an order was passed that the defendants should be served by munadi and affixation for September 13, 1994. On September 13, 1994, the case was adjourned for service of the defendants for November 16, 1994, as the munadi had not been effected. Vide order dated November 29, 1995, it was noticed that the munadi had been effected. AW5 no doubt had stated that he effected the munadi in the village but even the plaintiff had not described the village properly. Defendants being residents of Village Panjwar, Sub Tehsil Chabal, Tehsil Tarn Taran, District Amritsar , cannot be said to have been served in Village Panjwar falling in Tehsil and

District Amritsar. The munadi, if any, was not effected at correct address. So far as the delay in filing of an application under Order 9 Rule 13 CPC is concerned, the defendants Jeon Kaur and Gurmej Kaur had appeared as witnesses to show that they did not have any knowledge about the proceedings regarding inheritance of Dalip Singh whose unregistered Will has been relied upon by the plaintiff- petitioner to claim the property of Dalip Singh contrary to the natural inheritance.

Counsel for the petitioner has placed reliance on **Mahabir Singh Vs. Subhash and others**, 2008 (1) RCR (Civil) 32 to contend that the limitation for setting aside the ex-parte decree is 30 days under Article 103 of the Limitation Act. He also placed reliance on **Bahadur Singh and Company and another Vs. Gian Singh**, 2012 (5) RCR (Civil) 713 in support of his contention that after defendants are served and the application is filed by them after limitation, the ex-parte decree should not be set aside.

The above said judgments are not applicable to the facts of the present case as the evidence on the record is not sufficient enough to arrive at a conclusion that the defendants had actually been served by substituted service of munadi and affixation. In this context, the lower Appellate Court observed as follows:-

“12. Dalbir Singh filed suit for declaration against Joginder Kaur Gurmej Kaur and Jino alias Jeon Kaur claiming to have inherited Dalip Singh on the basis of Will dated 12.6.1986 and defendants who

are widow and daughters of Dalip Singh have got no right, title and interest in the estate of Dalip Singh. Perusal of file of Civil Suit shows that vide order dated 9.2.2004, notice to defendants was ordered to be issued on PF/RC for 30.4.1994. Such summons were received back with the report dated 21.2.1994 of Hazara Mal, Process Server that no persons by the names of Joginder Kaur, Gurmej Kaur and Jino alias Jeon Kaur are residing in the village. On this report dated 21.2.1994 of Hazara Mal, Process Server attested by Pal Singh Chowkidar of Village Panjwar, learned court passed order dated 30.4.1994 that defendants be summoned on PF/RC for 6.8.1994. Registered covers were sent for 6.8.1994 for the service of the defendants but same were also not delivered to the defendants/ addresses and were received back with the report that nothing could be known about addresses so same should be returned to the sender. Then learned trial Court passed order dated 6.8.1994 that registered envelope received with the report that village is big and persons of these names are not available. He is satisfied that

defendants cannot be served in ordinary way and be summoned through affixation and munadi for 13.9.1994. On 13.9.1994, order was passed for service of defendants for 16.11.1994 on old munadi charges. Subsequent orders were passed as munadi was not effected and finally vide order dated 29.11.1995, it was noticed that munadi has been effected but defendants have not appeared and they are proceeded against exparte. So aforementioned orders show that defendants were never personally served. Summons and registered covers were received back either with report that they are not residing in the village or that village being big nothing could be known about applicants. Learned trial Court instead of asking plaintiff to provide correct and complete address of the defendants who were none else but his mother and sisters ordered for service through substituted service of munadi and affixation. Though AW5 Davinder Singh has stated that he effected munadi in the village but it is also worth considering that even plaintiff had not described the village properly. Defendants were stated to be residents

of village Panjwar, Tehsil and District Amritsar. Summons were also issued by describing village accordingly and by mentioning defendants to be resident of such village. However, defendants, indisputably, were residents of Village Panjwar Sub Tehsil Chabal, Tehsil Tarn Taran. Village Panjwar admittedly does not fall in Tehsil and District Amritsar as stated by plaintiff in plaint and in this way even wrong address of defendants was given.”

In view of the above, the petition is dismissed. The judgment passed by the Additional District Judge, Amritsar regarding its satisfaction that defendant- respondents have not been served, does not warrant any interference and is hereby affirmed, however, in the interest of justice it is ordered that the trial Court shall expeditiously decide the case by giving fair opportunity to the defendants and decide the case on merits.

August 3, 2015
sanjay

(M.M.S.BEDI)
JUDGE