

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

C. R No. 8180 of 2015 (O&M)

Date of decision : 03.12.2015

Gurdial Singh (deceased) through his LRs & ors.Petitioners

versus

Harnek Singh and others ...Respondents

CORAM: **HON'BLE MS. JUSTICE RITU BAHRI**

Present: Mr. I.S. Brar, Advocate
for the petitioners.

RITU BAHRI , J. (Oral)

Challenge in this petition is to order dated 11.07.2013 passed by learned Civil Judge (Sr. Divn.), Bathinda and judgment dated 30.07.2015 (P-3) passed by Addl. District Judge, Bathinda.

Plaintiffs/Respondents filed a suit claiming that they were owners in possession of 5/12th share of land measuring 32 kanals 09 marlas, as fully detailed in the headnote of the plaint. The ex parte decree dated 15.12.2000 was passed in favour of the respondents and thereafter, the petitioners/defendants filed an application under Order 9 Rule 13 CPC, which was dismissed on 11.07.2013 and appeal filed against the ex parte decree was also dismissed on 30.07.2015.

Learned counsel for the petitioner contends that deceased Gurdial Singh and Gurdas Singh never received any summon in Civil Suit No. 81 of 04.06.1998 filed by respondent Nos. 1 to 7 and respondent Nos. 1 to 7 procured the false report regarding the service of the summons upon deceased Gurdial Singh and Gurdas Singh through their attorney Sadhu Singh, who also received any summons on behalf of deceased Gurdial Singh and Gurdas Singh. The signatures of Sadhu Singh have been obtained by respondent Nos. 1 to 7 in connivance and collusion with the process server. The petitioners came to know about the ex parte judgment and decree only on 17.03.2005 from the reply filed by respondent Nos. 1 to 7 in an application of redemption of land in question, filed by the applicant before the Court of Collector, Sub Division, Bathinda.

Heard learned counsel for the petitioners

Reference at this stage can be made to deposition of Sadhu Singh, who in his cross examination has admitted that, he is attorney of Gurdial Singh and Gurdas Singh and Gurdial Singh used to thumb mark the documents and Gurdas Singh used to append his signatures. He further admitted that power of attorney has not been cancelled till date. However, he denied that he had received any summons (Mark R2) or it was signed by him at Mark R2. He further

denied that summons were again issued in the name of Gurdial Singh and Gurdas Singh for 24.09.1998 Mark R5 and R6, which were received by them and which were thumb marked by Gurdial Singh and signed by Gurdas Singh at Mark R7 and R8.

Another witness i.e Retired Process Server Surjit Singh, who deposed that the summons were duly delivered to Sadhu Singh on behalf of Gurdial Singh and Gurdas Singh and he made report regarding the same. He identified the certified copy of the summons Ex RW1/A and RW1/B and Ex RW1/C and RW1/D. He further delivered the summons to Gurdial Singh in person on 20.09.1998, who thumb marked the same as a token of receipt of the summons and further delivered the summons to Gurdas Singh on 20.09.1998, who signed as a token of receipt of the summons and the same were witnessed by Lal Singh, Chownkidar of village Chak Ruldu Singh wala, who identified the original summons of the file and certified copy Ex RW1/E and his report Ex RW1/F and Ex RW1/G and Ex RW1/H.

Further Sanjiv Sharma, Handwriting Expert compared the signatures and thumb impression with the stand signatures and thumb impression and concluded that the same are of Sadhu Singh and Gurdas Singh and thumb impression is of Gurdial Singh. No counter evidence or any expert has been examined to show that these thumb

impressions and signatures were not of the applicants. Lal Singh, Chownkidar was also not being examined by the applicants, who belonged to their village.

In view of the above factual position, there is no dispute that the Process Server had duly served Sadhu Singh first and thereafter, Gurdial Singh and Gurdas Singh, which was witnessed by Lal Singh, Chownkidar of the village. Further the thumb impression and signatures of the applicants have been duly proved by the Handwriting Expert.

The present petition is accordingly dismissed, being devoid of any merit.

03.12.2015

G Arora

(RITU BAHRI)

JUDGE