

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 973 of 2013 (O&M)
Date of Decision: 16.07.2015.

Swaran Kaur and others

.....Petitioners

Versus

Amrik Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. N.K.Joshi, Advocate
for the petitioners.

Mr. Arun Bansal, Advocate
for the respondent.

SABINA, J.

Petitioners have filed this petition under Article 227 of Constitution of India challenging the order dated 10.12.2012 whereby application moved by the petitioners under Order 9 Rule 13 of the Code of Civil Procedure, 1908 ('CPC' for short), was dismissed.

Learned counsel for the petitioners has submitted that the petitioners had not received any summons qua the filing of the suit by the respondent. Petitioners No. 2 and 3 were married and were residing in their matrimonial home. So far as petitioner No. 1 is concerned, she had got remarried and had left village Rajpur. No effort was made to serve the petitioners by giving their correct addresses. Petitioners were ordered to be served through publication in the 'Daily Tribune'. Petitioners No. 2 and 3 were illiterate whereas petitioner No. 1 could merely sign in Punjabi.

Therefore, the petitioners had no knowledge about the publication of summons in the newspaper which was published in English.

Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that despite due service, petitioners had failed to contest the suit filed by the respondent.

In the present case, respondent had filed suit against the petitioners for specific performance of agreement to sell dated 9.1.1991 executed by Rattan Singh. Petitioner No. 1 is the widow of Rattan Singh whereas petitioner No. 2 and 3 are the daughters of Rattan Singh. A perusal of the interim orders, placed on record by way of Annexure P-2, reveal that on 18.11.1997, summons issued to the petitioners were received back unserved and fresh summons were ordered to be issued for 20.1.1998. On 20.1.1998, summons of the petitioners were received back with the report that the petitioners could not be served on account of incorrect addresses. On an application moved by the respondent, petitioners were ordered to be served by way of publication in the 'Daily Tribune'. *Ex parte* decree was passed against the petitioners on 20.7.1999. The case of the petitioners is that petitioners No. 2 and 3 were married and they were residing in their matrimonial home. So far as respondent No. 1 is concerned, she had got remarried after the death of Rattan Singh. Petitioners No. 2 and 3 are stated to be illiterate whereas petitioner No. 1 is stated to be capable of only signing in Punjabi. Apparently, the petitioners were not in a position to know about the publication of the summons qua the pendency of the suit against them in the 'Tribune' which was published in English. Petitioners had come to know about the *ex*

parte decree against them and approached the Trial Court for setting aside the *ex parte* judgment and decree. From a perusal of the impugned order, it is evident that Charan Singh was son of Rattan Singh. However, Charan Singh was not impleaded as a defendant.

In the facts and circumstances of the present case, the learned Trial Court erred in dismissing the application moved by the petitioners under Order 9 Rule 13 CPC. The *ex parte* judgment and decree against the petitioners were liable to be set aside as the petitioners had no knowledge qua the pendency of the suit.

Accordingly, this petition is allowed. Impugned order dated 10.12.2012 is set aside. Consequently, the application moved by the petitioners under Order 9 Rule 13 CPC is allowed.

**(SABINA)
JUDGE**

July 16, 2015
Gurpreet