

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

C.R.No.1041 of 2016

Date of Decision: February 15, 2016

Kusum (since deceased) through L.Rs

...Petitioner

Versus

Purshotam Kumar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Shrey Goel, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the order dated 22.7.2015 passed by the Additional District Judge, whereby the appeal filed by defendant No.1 against the order dismissing the application under Order 9 Rule 13 of the Civil Procedure Code, has been allowed.

Mr.Shrey Goel, learned counsel appearing on behalf of the petitioners submits that the trial Court dismissed the application by holding that defendant No.1 had the knowledge of the case as the suit was filed in 2003 and during its pendency, a panchayat was convened in 2005 and the Member of the Panchayat PW-3 Purshotam Kumar stated that the plaintiff was offered a sum of ₹2.00 lacs and she agreed for withdrawal of the suit. This fact itself was sufficient to prove that defendant No.1 was having the knowledge of the suit, irrespective of the fact that there was a report of service or not. An application was filed on 22.2.2011 against the judgment

and decree dated 26.11.2010. The Lower Appellate Court has committed illegality and perversity in ignoring the aforementioned evidence and prays for setting-aside of the impugned order.

I have heard the learned counsel for the petitioner and appraised the paper book.

The Lower Appellate Court, on examination of the record, arrived at an opinion that there was no service upon defendant No.1. Shri V.K.Kapoor Advocate had put in appearance on behalf of defendant No.12, however, the trial Court marked his presence as he was representing defendant No.12, though the memo of appearance did not mention about the same. The hearsay would not prevail upon the record of the trial Court. The Lower Appellate Court has arrived at a categoric finding that the service upon defendant No.1 was not effected in Civil Suit No.19 of 2000 and the application had been filed as per the provisions of Article 123 of the Limitation Act.

No ground for interference is made out. The impugned order cannot be said to have been passed without jurisdiction.

The revision petition stands dismissed.

February 15 , 2016
ramesh

(AMIT RAWAL)
JUDGE