

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 538 of 2010 (O&M)

Date of decision: 21.03.2016

Narender

... Petitioner

versus

Bhagwani and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. R. C, Tacoria, Advocate for the petitioner.

None for the respondents.

K.Kannan, J. (ORAL)

The revision is at the instance of the defendant whose application for setting aside the ex-parte decree passed in pre-emption suit on 29.05.2002 was dismissed. The plaintiff's challenged the purchase by the petitioner from the owner/vendor by the contending that he had a power to purchase in his capacity as a tenant. The application was founded on a plea that he had been served on 13.10.1999, with an undertaking by the bailiff that he will serve a copy of the plaint and that the summons alone were being served only because in the original act of service it was wrongly taken to another person in the name Village and who had a same name Narender. He was son of Lal Chand and when it was pointed out that the said Narender was not the person to whom the suit summons were to be served he took it back from him and served it to the petitioner who is the son of Dharam Singh with the undertaking as aforesaid. The suit was decreed not immediately on 14.10.1999 when the case was disposed nearly 3 years later on 29.05.2002.

The trial Court and the Appellate Court have adopted a reasoning that admittedly summons had been served prior to the date of hearing of the plaint and that the process server promised to have yet

another service effected could not be believed. The counsel reiterates the same arguments which were brought before the Court below. Counsel also contends that if the process server had been examined by the plaintiff himself, he would have proved that process server had undertaken to go back for service yet again with copy of the plaint. He was not actually served in accordance with law and, therefore, the decree would required to be set aside.

It is a case where the defendants must have surely known about the institution of suit, he having been actually served with summons. If he had not received the copy of the plaint and if he had been diligent, he would have surely enough time to apprise himself about the nature of case and decide the case. It is not as if the defendant did not have time to make appropriate inquiries on the service of summons, there was a time gap of nearly 3 years from the date of service of summons till the date of decree. I will find that the service was not illegal but merely irregular and I am satisfied that the defendant had notice of hearing of the case as the summons itself was served, in which event the proviso to Order 9 Rule 13 CPC will clearly apply. The proviso reads as

“Provided further that no court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff’s claim.”

The orders passed by the Courts below are sustained and intervention sought in the civil revision petition is declined. The revision petition is dismissed.

(K.KANNAN)
JUDGE

21.03.2016

kv