

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

CR No.7471 of 2012 (O&M)

Date of decision : 18.11.2016

Balbiro and others

...Petitioners

Versus

Jagdish Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Jagdish Manchanda, Advocate for petitioner(s).

Mr. Kuldeep Tiwari, Advocate for respondent(s).

AMIT RAWAL, J. (Oral)

The petitioners-defendants are aggrieved of the dismissal of the application for setting aside ex parte judgment and decree, whereby statutory appeal of the respondent-plaintiff against the judgment and decree dated 21.09.1999 has been allowed, ex parte, on 22.07.2000, in essence, suit for mandatory injunction calling the petitioners-defendants to hand over the vacant possession of the property being licensee, has been decreed.

Mr. Jagdish Manchanda, learned counsel appearing on behalf of petitioner(s) submits that respondent-plaintiff had instituted the suit seeking mandatory injunction for handing over the vacant possession of the suit property by branding the defendant as licensees, whereas categoric stand in the written statement was that the plaintiffs have not been able to

establish the ownership, much less, they have not become the owner on account of the exchange and had been in possession for the last so many years. The trial Court dismissed the suit but when appeal filed, the summons were sent and as per report of the Process Server, witnessed by the Village Chowkidar, all the defendants refused to accept the service. On the basis of the aforementioned report, the Court ordered for service upon petitioner through Munadi. Munadi was done by Village Chowkidar only. When witness summoned, found that the Proclamator is none else but a same person. As a result thereof, the lower Appellate Court decreed the suit. The respondent-plaintiff sought the execution of the judgment and decree at the fag end i.e. when period of limitation was to expire. On receiving the notice of the execution petition, acquired the knowledge of the ex parte judgment and decree and moved an application but same, has erroneously, been dismissed.

He submits that the resorting to the procedure of munadi is not proper or effective service in the absence of recording of satisfaction but should have ordered for publication as there is already judgment and decree of the trial Court in favour of his client. He submits that his client is willing to argue the main appeal subject to any terms and conditions which this Court deem it appropriate.

Mr. Kuldeep Tiwari, learned counsel appearing on behalf of respondents-plaintiff(s) submits that report of Process Server indicates the refusal and even the Munadi report conducted by the Chowkidar not only indicated its proclamation but pasting of the proclamation on the house yet the petitioners chose not to contest the appeal. Appeal has been allowed

vide judgment and decree dated 22.07.2000 in favour of appellant-plaintiff and they have been held to be owner and defendant as licensee. Application was highly belated and was barred by law of limitation and could not have taken the benefit of ignorance.

I have heard learned counsel for the parties and appraised the paper book and of the view that no doubt the approach of the petitioners has not only negligent but lackadaisical but the fact remains that there is already judgment and decree of one court i.e. trial Court in their favour, whereby suit of the respondent-plaintiff has been dismissed. Lower Appellate Court decreed the suit by putting the onus on the defendants, of course, in the absence of the petitioners-defendants. Be that as it may. On going through the paper book as well as record of the Courts below, it is evident that the Process Server had allegedly effected the service upon the petitioners which was witnessed by Amar Singh Village Chowkidar and it is the same very Chowkidar who has caused proclamation. The aforementioned fact should have been noticed by the lower Appellate Court while considering the application seeking setting aside of the ex parte judgment and decree dated 22.07.2000.

The Lower Appellate Court ought to have recorded satisfaction and ordered for publication. Had it been so, perhaps the petitioner would not have any cause to move the application. I cannot remain unmindful of the fact that respondents have also kept silence, in essence, did not seek execution of the decree, with promptitude, as noticed above.

In the nut-shell, both the parties had been not vigilant in seeking their vindication of their grievance.

Accordingly, I deem it appropriate to give the chance to the petitioners-defendants to contest the appeal. However, it would be subject to the cost of Rs.20,000/- to be paid to Mr. Kuldeep Tiwari, counsel for the respondents-plaintiffs in the High Court. Subject to the payment of costs, order under challenge is hereby set aside. Application is allowed. Appeal is restored to its original number.

This Court is sanguine of the fact that the lower Appellate Court is directed to decide the appeal as expeditiously as possible within a period of six months from the date of receipt of certified copy of the order.

Accordingly, revision petition stands allowed.

18.11.2016

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No