

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

**Civil Revision No.2243 of 2015 (O&M)  
Date of decision: 17<sup>th</sup> May, 2017**

**Harinder Sharma**

**.....Petitioner**

Versus

**Kishan Chand and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

**Present:** Mr. Binderjit Singh, Advocate  
for the petitioner.

Mr. Rajiv Anand, Advocate  
for respondent No.1.

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**RAMESHWAR SINGH MALIK,J,(ORAL)**

Feeling aggrieved against the order dated 09.12.2014, passed by the learned trial Court, whereby an application moved under Order 9 Rule 13 of the Code of Civil Procedure (in short 'CPC'), by defendant Kishan Chand was allowed, plaintiffs have approached this Court by way of present revision petition, filed under Article 227 of the Constitution of India for setting aside the said order.

Notice of motion was issued.

Heard learned counsel for the parties.

It is a matter of record that suit filed by the petitioner-plaintiff was for possession by way of partition of the joint and unpartitioned land between the parties. Plaintiffs as well as defendants were co-sharers in the suit land. The plaintiffs and defendants were also residents of the same village. In spite of these undisputed facts, defendants were sought to be served by way of publication which was a patently illegal approach adopted

by the plaintiffs. Learned trial Court also failed to appreciate abovesaid fact situation while permitting the plaintiffs to serve the defendants by way of substituted service through publication.

Once the parties were of the same village, the learned trial Court ought to have insisted to get the service effected by the plaintiffs either by way of dasti process or by registered AD posts. Since the method of effecting service on the defendants itself was patently illegal, the learned trial Court was well within its jurisdiction to pass the impugned order dated 09.12.2014 thereby allowing the application of the defendants under Order 9 Rule 13 CPC and the impugned order deserves to be upheld.

It seems that the endeavour on the part of the plaintiffs-petitioner was to get their suit decreed ex-parte. They were proceeding on a clever approach and the defendants were being condemned unheard, which goes against the basic principles of natural justice, violating the golden rule of audi alteram partem. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned trial Court committed no error while passing the impugned order and the same deserves to be upheld for this reason also.

Keeping in view the peculiar facts and circumstances of the case noted above, instant one was not a case where the learned trial Court ought to have imposed costs on the defendants, while allowing their application under Order 9 Rule 13 CPC. Despite the abovesaid circumstances, plaintiffs-petitioner were compensated by payment of reasonable amount of costs by the learned trial Court at the time of passing of the impugned order. In such a situation, no fault can be found with the impugned order, passed by the learned trial Court which is duly supported

by sound reasons and the same deserves to be upheld for this reason as well.

During the course of hearing, learned counsel for the petitioner could not point out any patent patent illegality or perversity in the impugned order which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order is a self contained and reasoned one and the same deserves to be upheld for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17<sup>th</sup> May, 2017  
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(RAMESHWAR SINGH MALIK)  
JUDGE

Whether speaking/reasoned

Yes/No

*Whether Reportable :*

*Yes/No*