

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

**CR No.4676 of 2013(O&M)
Date of Decision: 27.09.2017**

Pappu ...Petitioner

Versus

Nand Kishore ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. D.K. Sihag, Advocate
for the petitioner.

Mr. Sandeep Bansal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 09.11.2010 passed by Civil Judge (Senior Division), Hoshiarpur and order dated 23.04.2013 passed by Additional District Judge, Hoshiarpur vide which application under Order 9 Rule 13 CPC for setting aside the *ex parte* judgment and decree dated 02.09.1998 was dismissed in both the Courts.

[2]. A Civil Suit No.102 was filed on 04.09.1997. On 10.12.1997, service was sought to be effected by the Process Server upon the defendant/respondent. Defendant was not found residing at the given address and affixation was done by the Process Server in the presence of one Vinod Kumar son of

Om Parkash. Thereafter, *munadi* was done and the defendant was proceeded against *ex parte*. An *ex parte* civil Court decree was passed on 02.09.1998.

[3]. In the application filed under Order 9 Rule 13 read with Section 151 CPC, trial Court framed the following issues on 08.01.2002:-

“1. Whether judgment and decree dated 02.09.1998 is liable to be set aside, on the grounds mentioned in the application? OPA

2. Whether absence of applicant was bona fide and not intentional? OPA

3. Whether application is not within time? OPA

4. Relief.”

On 05.03.2010, additional issue was framed i.e.

“3A. Whether there are sufficient grounds to condone the delay in filing this application? OPA”

[4]. The applicant/petitioner examined Manohar Lal (Process Server) as AW 1 and himself as AW 2. On the other hand, respondent himself stepped into witness box as RW 1 and after proving the registered envelope Ex.R1, summon with report Ex.R2 and R3, objection filed by the defendant Ex.R4 and sale deed dated 22.02.1993 as Mark RA closed the evidence.

[5]. Evidently, the summons were sought to be served upon the defendant and when he was not found residing at the given address, affixation was done which was followed by recording of

testimony of one Vinod Kumar (Process Server) son of Om Parkash. Vinod Kumar has not been examined by the petitioner.

[6]. Defendant/petitioner was proceeded against *ex parte* and application under Order 9 Rule 13 CPC came to be filed on 13.08.2001. While appearing as AW2, petitioner has admitted that he has no concern with the disputed land as he had already sold the same. He further stated that Rajesh Kumar told him that the other suit has been got decreed by them and now the petitioner cannot escape.

[7]. During course of arguments, it has come to fore that petitioner has already sold the property long back in favour of Inderpal Singh.

[8]. CM No.25588-CI of 2015 was filed by the petitioner for placing on record affidavit along with judgment and decree dated 09.02.2015 passed by Civil Judge (Senior Division), Hoshiarpur in a Civil Suit No.30A of 2005/2014 titled Inderpal Singh Vs. Nand Kishore Sharma and another. Inderpal Singh has filed the aforesaid suit against the petitioner as well as Nand Kishore Sharma (decree holder).

[9]. In the aforesaid suit, the present petitioner filed the written statement and also submitted the factum of *ex parte* decree dated 02.09.1998 and filing of application under Order 9 Rule 13 CPC. The sale deed was executed by the petitioner in

favour of Inderpal Singh on 13.02.1998. The alleged knowledge derived from Rajesh Kumar on 13.08.2001 was proved to be farce in view of pleadings made in para No.8 of the said judgment dated 09.02.2015 passed in the aforesaid suit titled Inderpal Singh Vs. Nand Kishore Sharma and another. The suit was dismissed qua the petitioner under Order 9 Rule 2 CPC.

[10]. Learned counsel for the petitioner relied upon **Nand Kishore and others Vs. Santosh Mishra, 2014(4) RCR (Civil) 611** and contended that in the event of finding the tenant to be absent and refusal by his father, trial Court should have resorted to another effort to serve the defendant, rather to proceed against *ex parte*. The facts of the aforesaid case were different as there was no service of affixation in the said case in terms of Order 5 Rule 17 CPC. In the present case, in the absence of the defendant, affixation was done which was duly witnessed by the witness namely Vinod Kumar son of Om Parkash. Necessary issues were framed and the defendant did not lead any evidence.

[11]. It appears from the record that the petitioner is litigating unnecessarily after having sold the land to Inderpal Singh on 13.02.1998 itself. The factum of sale in favour of Inderpal Singh has been admitted by the petitioner while appearing as AW 2. The summons followed by affixation and recording statement in

the presence of Vinod Kumar son of Om Parkash would satisfy the requirement of Order 5 Rule 17 CPC. Petitioner has not examined aforesaid Vinod Kumar in order to substantiate that affixation was not made by the Process Server. The Process Server has not deposed anything in favour of the petitioner.

[12]. In the light of aforesaid facts, I find that the petitioner after selling the land to Indperpal Singh on 13.02.1998 is involved in unnecessary litigation. The suit filed by Inderpal Singh against the decree holder and the present petitioner was dismissed on 09.02.2015. In those proceedings, the petitioner has admitted the factum of *ex parte* decree dated 02.09.1998 and filing of application under Order 9 Rule 13 CPC on 13.08.2001. Thereafter, the petitioner cannot turn around and allege that the factum of *ex parte* decree came to his knowledge only from Rajesh Kumar.

[13]. Taking into consideration all the attending facts and circumstances of the case, I deem it appropriate not to grant any indulgence in favour of the petitioner who has already sold the property in favour of one Indepal Singh and Inderpal Singh has also lost Civil Suit No.30A dated 26.05.2005 against the decree holder/respondent in which petitioner was also arrayed as defendant No.2 and the suit qua him was dismissed under Order 9 Rule 2 CPC.

[14]. Having considered the controversy in wider spectrum, I do not wish to interfere in the orders passed by the Courts below. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

27.09.2017	(RAJ MOHAN SINGH)
prince	JUDGE
Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No