

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

CR No.6247 of 2016

Date of Decision: 28.11.2017

Ganpat Singh

.....Petitioner

Versus

Omwati

... Respondent

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

Present:Mr. Amit Jain, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 20.08.2016 passed by Civil Judge (Junior Division), Pataudi, District Gurgaon whereby application for setting aside the *ex parte* judgment and decree dated 27.03.2008 was accepted.

[2]. Plaintiff filed a suit for declaration (simplicitor) to the effect that the plaintiff is owner in possession of 112 kanals, 2 marlas situated in village Farrukhnagar, Tehsil and District Gurgaon. The suit was decreed *ex parte* on 27.03.2008. Defendant was proceeded against *ex parte* vide order dated 28.09.2006.

[3]. Defendant filed an application under Order 9 Rule 13 read with Section 151 CPC on the ground that the judgment and decree dated 27.03.2008 was the outcome of misrepresentation, fraud and concealment of facts. Plaintiff had no concern with the suit land, rather defendant was owner in

possession of the same. No summons were issued to the defendant by ordinary process or through registered post.

[4]. Trial Court accepted the application of the defendant after noticing the fact that in the original plaint, address of the defendant was mentioned as “Omwati wife of late Sh. Ram Kanwar son of Chhotu Ram son of Gheesa Ram, VPO Khera Khurampur, Tehsil Farrukhnagar” and presently resident of “village Ujoli, Tehsil Kot Kasim, District Alwar”. Registered cover issued for the service of defendant was received back unserved for want of correct address and thereafter, plaintiff moved an application under Order 6 Rule 17 CPC for amendment of plaint and the same was allowed on 31.07.2006. On the fresh address, fresh notice was issued through registered cover and the same was not received back served or otherwise. On the said premise, presumption of due service was drawn as the registered notice sent on the address was not received back served or otherwise within 30 days.

[5]. The question arose whether fresh notice was issued on correct address of the defendant. As per postal receipt Ex.RW2/A, address of the defendant was shown as “Omwati wife of Hari Ram, resident of village Ujoli (Rajasthan)”. No summon in duplicate showing the address on which notice was sent was available on record. On the basis of material on

record, presumption of due service cannot be made as the fresh address to which notice/summon was issued was lacking in material particulars.

[6]. Learned counsel for the petitioner has made fructific effort to project a case of due service. In my considered opinion, indulgence granted by the trial Court with reference to material on record cannot be interfered with as the defendant cannot be condemned unheard.

[7]. In view of facts and circumstances of the case, defendant is required to be given audience and the case needs to be decided on merits. No error of jurisdiction has been pointed out in the impugned order dated 20.08.2016 passed by Civil Judge (Junior Division), Pataudi, District Gurgaon, nor the same is found to be suffered with any perversity. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

28.11.2017

prince

Whether Reasoned/Speaking

Whether Reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No