

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.6105 of 2017 (O&M)
Date of Decision: 11.09.2017

Ram Chander

... Petitioner

Versus

Tej Krishana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajender Singh Malik, Advocate,
for the petitioner.

ANIL KSHETARPAL, J. (ORAL).

The plaintiff is in revision petition against the order passed by the trial Court on 18.07.2017 allowing an application under Order 9 Rule 13 CPC while setting aside the ex parte decree.

The learned trial Court after framing the issues and allowing the parties to lead evidence, has recorded as under: –

“17. Before deciding application on merits, I want to highlight certain facts which would show as to how the ex parte Judgment and decree have been obtained by the plaintiff. As stated above, all the defendants were residents of Sri Nagar. No notice to defendant No.2 and 3 was issued, still Sh. O.K. Kaushik, Advocate appeared on their behalf after filing of memo of appearance but he did not file power of attorney at any point of time and continue to appear on the basis of memo of appearance. If he was authorised by defendant No.2 and 3 to appear on their behalf then as to why did he not obtain power of attorney from them. The purpose of memo of the

appearance was to put appearance for a particular date and not to appear for each and every date of hearing. It leads to inference that Sh. O.K.Kaushik, Advocate, was never authorised by defendant No.2 and 3 to appear on their behalf and there was some sort of collusion between him and the plaintiff. This fact can be more specifically explained once the defendant No.2 and 3 are served and to appear in the court.

18. Another aspect of the matter is that plaintiff had challenged the sale deeds but he did not pay the ad valorem Court fees which was payable as held by the Hon'ble Supreme Court in case titled as Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors., AIR 2010 SC 2807 wherein it has been observed that a person who is an executant of the deed and sues for a declaration that the deed is null and void and does not bind him or his share, he has to pay ad valorem Court fee on the sale consideration.

19. Now, I come to the merits of the application. Admittedly the defendant No. 1 was neither personally served nor he refused at any point of time to receive the summons. Perusal of the file would show that notices sent to him were received back with the report that he had left the address. In such a situation, it was the duty of the plaintiff to disclose the correct address of the defendant No.1.

20. It is the specific case of the defendant No.1 that earlier he was residing in Sri Nagar but on account of militant activities in that area he had shifted to Jammu and was residing at

Jammu when notices were sent to him on his Sri Nagar address. He has also disclosed his address of Jammu.

21. The Court can also take judicial notice of the fact that most of the member of the minority community residing in Srinagar and surrounding areas had to leave that area on account of militant activities and most of them shifted to Jammu area. Therefore, I find truth in the submission of the defendant No.1 that when the summons were sent to him he was residing in Jammu and not in Srinagar”.

Learned counsel for the petitioner has submitted that defendant No.1 in the cross-examination had admitted that he knew about the summons issued by the Court, however, he did not receive the same. He submits that in view of the admission made, the order passed by the Court is erroneous.

I have considered the submission of the learned counsel for the petitioner.

The statement of a witness is to be read as a whole. One line in the statement cannot be taken in isolation and read out of the context. It is the case of defendant No.1 that on account of militancy he had shifted from Srinagar to Jammu. In these circumstances, even if defendant No.1 had some vague knowledge that summons were sent to his address at Srinagar, it cannot be deemed to be a proper service. It has been recorded by the trial Court that defendant No.1 was never served personally nor he refused to receive the summons at any point of time. It is further found by the learned trial Court that notice sent to defendant No.1 was received back with the report that he had left the address.

Learned counsel for the petitioner has further argued that the notice was published in the Kashmir Times newspaper having wide circulation in Kashmir Valley and, therefore, the proper procedure was adopted.

I have considered the submission of the learned counsel for the petitioner.

It is clear from the reading of the cross examination of defendant No.1 that he had shifted to Jammu area on account of militancy. No evidence has been produced on the file to prove that the Kashmir Times newspaper is having circulation in Jammu area also. In any case, the learned trial Court has set aside the ex parte decree and permitted the defendants to contest the suit on merits. There is no error in the order passed by the learned trial Court.

In view of the above, I do not find any good ground to interfere with the order passed by the learned trial Court.

The revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

11.09.2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No