

Civil Revision No.6948 of 2016 (O&M)

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

Sr. No.102

**Civil Revision No.6948 of 2016 (O&M)
DECIDED ON: April 07, 2017**

NEENA RANI @ KAMLESH RANI

..PETITIONER

VERSUS

SHANTI DEVI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jasmail Singh Brar, Advocate,
for the petitioner.

JASPAL SINGH, J.

Through the instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought setting aside of order dated November 07, 2015 (Annexure P-9) passed by learned Additional Civil Judge (Sr. Divn.) Sri Muktsar Sahib, vide which an application moved under Order IX Rule 13 CPC (Annexure P-3) to set aside ex parte judgment and decree date February 15, 2014 was dismissed. Subsequently, an appeal preferred against aforesaid judgment and decree dated February 15, 2014, was also dismissed by learned Additional District Judge, Sri Muktsar Sahib

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vide judgment and decree dated September 08, 2016 (Annexure P-11).

2. Briefly stated the facts giving rise to the instant petition are that respondents No.1 to 7 moved an application for passing final decree in Civil Suit No.944 dated September 18, 1999 captioned as “Shanti Devi & Ors. Vs. Raj Kumar and Ors.” in respect of house on the basis of preliminary decree dated March 10, 1997 passed by learned Civil Judge (Jr. Divn.) Sri Muktsar Sahib. The aforesaid preliminary decree dated March 10, 1997 was modified vide judgment and decree dated December 21, 2001 passed by Additional District Judge, Sri Muktsar Sahib and the said preliminary decree was passed with regard to two houses.

3. However, being dissatisfied with judgment and decrees passed by both the courts below, Gian Devi & Ors. preferred a regular second appeal before this Court and vide judgment dated September 03, 2008, judgment and decree dated December 21, 2001 was set aside and preliminary decree was passed for possession by way of partition of half share of the house by meets and bounds. The applicants as well as that of respondents were held entitled to the instant of ½ share in each of the house.

4. Subsequent thereto, an application was preferred for passing of final decree for partition of property on the basis of judgment and decree passed by this Court dated September 03, 2008. However, in the said application for passing of final decree, Gian Devi and Kamlesh Rani failed to appear despite due service. Accordingly, they were proceeded against ex parte. Respondent-Ashok Kumar and legal heirs of Charanjit appeared, contested and filed objections to the application. However, objections preferred by them were dismissed vide order dated July 18, 2011 and a

Local Commissioner was appointed for suggesting the mode of partition. An application for passing of final decree was allowed vide judgment and decree dated May 15, 2014.

5. Kamlesh Rani-petitioner preferred an application under Order IX Rule 13 CPC read with Section 151 CPC for setting aside the ex parte judgment and decree dated May 15, 2014, whereby an application for passing of final decree was allowed. The said application was contested by the respondents-Shanti Devi and others. Ultimately, that application was dismissed by learned Additional Civil Judge (Sr. Divn.), Sri Muktsar Sahib vide judgment and decree dated November 07, 2015 and appeal preferred against aforesaid judgment and decree dated November 07, 2015 was also dismissed by the Court of learned Additional District Judge, Sri Muktsar Sahib on September 08, 2016.

6. Dissatisfied against the dismissal of application as well as an appeal, petitioner has preferred instant revision petition.

7. While assailing the impugned judgment and decrees passed by both the courts below, it has been apparently argued by learned counsel for the petitioner that petitioner was never served in the case, in which final decree has been passed vide judgment and decree dated November 07, 2015. The courts below did not consider that compliance of provision contained in Order V Rule 17 CPC for service of petitioner is mandatory. The proceedings as to refusal and report of Process Server/serving officer on summon issued for February 26, 2009 are mere farce. Petitioner never refused to accept notice issued by the court for her appearance on February 26, 2009. In case of refusal to accept notice, it was mandatory and

obligatory on the part of Process Server to comply with provision contained in Order V Rule 17 CPC i.e. to affix a copy of summon along with plaint etc. on outer door or some other conspicuous part of her house. But, in the case in hand, neither any house number figures nor in the detail particulars of residential address have been given. Moreover, there is no report of the Process Server as to who identified or disclosed about house number of the petitioner to affix a copy of summons. The refusal report and affixation of summons on the conspicuous part of the house of petitioner has been shown to be witnessed by Suman Kumar who is none-else but the plaintiff who is otherwise interested in the success of the matter. The report appearing on the summons (Exhibit R-2) is result of connivance of plaintiff with Process Server who never visited the spot for house of the petitioner, which is located in a thickly populated area of city Ludhiana.

8. Learned counsel for the petitioner further contended that issuance of summons is not a mere formality to be observed in fact it is a serious business. Therefore, court should be vigilant enough to see whether summons were duly served in accordance with law or not before passing any order for proceeding ex parte in the matter. As per case of the respondents, service of petitioner was affected through munadi, which is a mere farce. While relying upon judgment of Hon'ble Apex Court captioned as ***Sushil Kumar Sabharwal vs. Gurpreet Singh, 2002 (3) RCR (Civil) 431; 2002(5) SCC 377***, it has been submitted by learned counsel for the petitioner that tendering of summons, its refusal and affixation of summons and copy of plaint on the conspicuous part of the house should have been witnessed by persons(s) who identified the defendant and his residential

house and witnessed such procedure. But in the instant case, no independent person was associated to witness for the procedure of service of summons. Rather summons for refusal and affecting munadi was witnessed by none-else. Moreover, to rebut the testimony of Process Server, there is a testimony of petitioner on oath which cannot be discarded or disbelieved.

9. The next submission of learned counsel for the petitioner is that wrong address of petitioner was given in fact at the time of marriage, petitioner was named as Kamlesh Rani but after marriage, she changed her name to Neena Rani and for the last more than 30 years her name is Neena Rani, which is recorded in all the documents. This fact was known to respondents but just to get undue advantage, the name of the petitioner was mentioned as Kamlesh Rani instead of Neena Rani. Moreover, both the courts below have failed to appreciate that rule of procedure are mere handmaid of justice. At the altar of procedure, substantive justice cannot be sacrificed. Thus, impugned judgment and decrees passed by both the courts below are not sustainable in the eyes of law and are liable to be set aside by way of acceptance of instant petition.

10. After bestowing due consideration to the aforesaid submissions made by learned counsel for the petitioner, appraisal of various documents and scrutinizing the impugned judgment and decrees/orders, this Court does not find any legal and factual substance therein. Impugned judgment and decrees/orders are absolutely in consonance with evidence available on record as well as settled canons of law.

11. Before proceeding further to decide the matter on merits, it

would be desirable to mention that each and every case has its own peculiar and particular facts and no judgment can be applied as a straight jacket formula. In the instant case, no doubt marriage of petitioner-Kamlesh Rani was solemnized took place in the year 1977 and as per her version, her name was changed to Neena Rani from her previous name Kamlesh Rani. But this version put forth by the petitioner does not appeal to reason and stands falsified from the various documentary evidence. During the course of evidence before trial court, respondents have placed on record the copies of judgment and decrees passed in civil suits and appeals filed by the parties. A glance at the aforesaid judgment and decrees as well as orders/judgments passed in appeal transpires that parties are litigating with each other since 1990. Civil Suit No.944 dated September 18, 1999 was instituted against Gian Devi wife of Raj Kumar etc., in which, Kamlesh Rani was also one of the parties, who contested the said suit. At no point of time, she did not make any effort to get her name rectified, corrected or changed as Neena Rani in place of Kamlesh Rani and which was decided on March 10, 1997. Being dissatisfied with aforesaid judgment and decree dated March 10, 1997, Gian Devi as well as petitioner-Kamlesh Rani etc. preferred an appeal, in which they have mentioned her name as Kamlesh Rani and not as Neena Rani. Similarly, while filing the suit for final partition, address of Kamlesh Rani was just reiterated as mentioned in previous litigation. Notice of an application for passing of final decree was also issued at the same address, where Process Server Ram Lal visited and made a report on the summons, Kamlesh Rani was found present in her house, who was identified by Suman Kumar and she refused to accept the summons.

Process Server has appeared in witness box as RW-1 though, he has been subjected to thorough cross examination yet nothing fruitful to the petitioner could be elicited from him. The statement of Kamlesh Rani can be said to be a self serving one whereas Process Server visited the house of Kamlesh Rani in discharge of his official duty presented summons for service to Kamlesh Rani who refused to accept the same. The Process Server-Ram Lal cannot be said to be a foe to the petitioner or a friend of the respondents. He made reports on summons and affixed copy of summons as well as that of plaint in discharge of his official duty and thus, his statement cannot be discarded or disbelieved on account of colour of his official status. Judgment *Sushil Kumar Sabharwal (supra)* is distinguishable of facts and is of no help to the petitioner. The Process Server took all the steps, which were required to be taken by him in accordance with provision contained in Order V Rule 17 CPC. It also cannot be said that any wrong address of petitioner was given while filing an application for passing the final decree, in view of the judgment passed by this Court dated September 03, 2008. In the instant case, petitioner is proved to have been duly served but she did not appear to contest an application for passing of final decree. On the basis of preliminary decree dated March 10, 1997, judgment and decrees passed by both the courts below are absolutely in consonance with evidence as well as legal proposition and do not call for any interference by this Court.

12. As a sequel to the aforesaid discussion, this Court does not find any substantial question of law to be determined by this Court in instant revision petition in view of the aforesaid discussion and concurring findings arrived at both the courts below. Thus, there is no infirmity, illegality or

perversity in the impugned orders. Accordingly, revision petition is dismissed, whereby impugned judgments/orders passed by both the courts below are upheld.

13. No order as to costs.

April 07, 2017
Ankur

(JASPAL SINGH)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No