

In the High Court of Punjab and Haryana at Chandigarh

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CR No.7218 of 2015

Date of decision: 6.10.2017

KISHORI LAL DECEASED TH LR CHETAN

.....petitioner

Versus

SHISH RAM AND ORS

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Sudhir Aggarwal, Advocate,
for the petitioner.

Mr. Ajay Jain, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(oral)

The present revision petition has been filed by the petitioner challenging order dated 4.8.2015 passed by Additional District Judge (Jr.Divn.), Rewari, whereby order dated 23.5.2011 passed by Civil Judge, Rewari was set aside and the ex parte decree dated 5.12.2008 was also set aside.

Plaintiff filed a suit for possession against the defendants in which notice was issued to defendant No.1. Vide order dated 21.11.2006 it was noticed by the trial Court that the notice issued to the defendant was received back un-served and thereafter notice was issued through *munadi* as well as by registered post for 8.1.2007. Vide order dated 8.1.2007,

registered notice issued to the defendant along with acknowledgement was received with the report that the defendant was not present at his house. *Munadi* was duly effected. Since none appeared before the trial Court, therefore, defendant was proceeded against ex parte and thereafter, exparte evidence of the plaintiff was allowed to be led and ex parte decree dated 5.12.2008 came to be passed against the defendant.

Defendant/ respondent filed an application under Order 9 Rule 13 CPC for setting aside the ex parte decree on 12.4.2010. The trial Court dismissed the application vide order dated 23.5.2011 on the premise that at the time of service of summon, the house of the defendant was found locked. Process server Dharambir Singh affixed copy of the summon on the door of the house of the defendant in the presence of Ram Kumar, Chowkidar. In the report of *munadi*, the report was submitted by Ajit Singh, process server, which was allegedly signed by Ram Kumar, Chowkidar and witness Sewa Ram son of Om Parkash. Feeling aggrieved against the order dated 23.5.2011, the defendant/ respondent filed appeal before the Additional District Judge, Rewari and the same has been accepted vide judgment dated 4.8.2015.

I have heard learned counsel for both the parties.

Evidently, the suit was filed on 15.6.2006. Notice of

the suit was given to the defendant for 4.9.2006 on filing process fee and copy of the plaint. On two occasions, notice could not be issued to the defendant for want of copy of the plaint. Ultimately, notice issued to the defendant was received back un-served and the same was ordered to be issued through *munadi* as well as by registered post for 8.1.2007 on filing of required fee. Thereafter, Dharambir Singh, process server, allegedly visited the house of the defendant and on finding the house to be locked, affixed the copy of the summon on the door of the house and got the signatures of Ram Kumar, Chowkidar on the report. Simultaneously, *munadi* was also conducted by Ajit Singh, process server and as per his report, Ram Kumar, Chowkidar and Sewa Ram had witnessed the same.

As per material on record once the house was found locked and the defendant/ respondent was not found present at the house, then at a subsequent stage a satisfaction has to be recorded by the trial Court before resorting to substituted service that the defendant cannot be served by means of ordinary process. No such satisfaction was recorded by the trial Court in the order dated 21.11.2006 and straightaway process of *munadi* was resorted to, besides summoning the defendant by means of registered post. The report of the process server, namely, Dharambir Singh dated 23.8.2006 was suggestive of the fact that the same was witnessed by Ram Kumar, Chowkidar.

Dharambir Singh, process server, has been examined as RW-1. Though he has supported the case of the plaintiff, but the statement of Ram Kumar, Chowkidar, while appearing as AW-1 has uprooted the claim of the plaintiff inasmuch as that the witness has denied his association with the process server on 23.8.2006. Similarly, the report of *munadi* has been witnessed by Ram Kumar, Chowkidar as well as Sewa Ram son of Om Parkash. As per testimony of Sewa Ram he has not supported the case of the plaintiff in the context of conducting *munadi*, rather the report was to the effect that defendant Shish Ram was away to Jaipur hospital where he was admitted. The aforesaid fact was told to the process server by the wife of Shish Ram.

Taking into consideration the entirety of the facts and circumstances of the case, I deem it appropriate to endorse the order dated 4.8.2015 passed by the Additional District Judge, Rewari. Consequently, this revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

October 06, 2017
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No