

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.1686 of 2016(O&M)

Date of Decision:-10.07.2017

Jagjit Singh.

.....Appellant.

Versus

Tarsem Singh & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. R.S. Bajaj, Advocate for the Appellant.

Mr. Sandeep Arora, Advocate for the respondent.

JASWANT SINGH, J.

Appellant-applicant is in appeal aggrieved against the order dated 05.01.2016 passed by the learned District Judge, Jalandhar whereby his application under Order 41 Rule 21 CPC and Order 9 Rule 13 read with Section 151 CPC, for setting aside ex-parte decree dated 3.5.2012, has been dismissed.

Learned Counsel for the appellant has argued that no notice was served upon him by the Appellate Court as service upon him was dispensed with by the Appellate Court and, therefore, the judgment and decree dated 3.5.2012 passed against the appellant is without jurisdiction. He has further argued that the Appellate Court was under judicial obligation to hear the aggrieved party i.e. the appellant before decreeing the suit of the plaintiff for specific performance in appeal. However, the impugned order

has been passed without considering these aspects.

On the other hand, learned Counsel for the respondent has argued that the appellate Court has passed a well reasoned and detailed impugned order and thus no interference is warranted.

After hearing learned counsel for the parties and perusing the paper book, this Court is of the considered view that the present appeal is devoid of any merit and deserves to be dismissed.

Admittedly, respondent no.1/plaintiff Tarsem Singh had filed a suit for possession by way of specific performance on 17.07.2007 on the basis of agreement to sell dated 17.02.2006 whereby, present appellant was impleaded as defendant no.2 (being a subsequent purchaser from defendant no.1, namely, Surinder Pal through Sale Deed dated 25.08.2006 i.e. during the pendency of the suit). The said suit was dismissed by Civil Judge (Sr. Divn.), Jalandhar vide judgment and decree dated 13.09.2010. Aggrieved against the said judgment and decree, plaintiff Tarsem Singh preferred an appeal before District Judge, Jalandhar in which, appellant was again impleaded as respondent no.2.

It is a conceded position that despite service, appellant-defendant no.2 did not contest the suit before the trial Court and it was only respondent no.2/defendant no.1-Surinder Pal who had contested the suit. It is also evident from the record that the addresses mentioned in the memo of parties, filed by plaintiff-respondent no.1 before trial Court as well as appellate Court were same, as that mentioned in the Sale Deed dated 25.08.2006. Thus, it cannot be said that appellant was not aware about the litigation and that he was not served properly, especially in view of the fact that summons as well as registered post letters were sent to him through

personal service.

In this view of the matter, the Appellate Court was well within its jurisdiction to dispense with the service of appellant-defendant no.2 at the time of hearing the appeal, *firstly*, being a subsequent purchaser of the property during the pendency of the suit; *secondly*, when he was already ex-parte before the trial Court and consequently chose not to contest the claim of plaintiff-respondent no.1; *thirdly*, respondent no.2-defendant no.1, namely, Surinder Pal contested the case tooth and nail against plaintiff-Tarsem Singh and thus, the interest of the appellant, being common with Surinder Pal, was being properly watched.

In view of the foregoing discussion, finding no merit in the present appeal, the same is hereby dismissed.

(JASWANT SINGH)
JUDGE

July 10, 2017
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>