

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

SAO No. 32 of 2018 (O&M)

Date of Decision: 02.05.2019

Satwinder Singh and another

...Appellants

VERSUS

Sharanjit Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Veneet Sharma, Advocate
for the appellants.

Mr. Kushagra Mahajan, Advocate
for the respondent.

SURINDER GUPTA, J. (Oral)

Heard.

Suit filed by respondent-Sharanjit Kaur seeking the relief of possession, mandatory injunction and permanent injunction with regard to land measuring 90 sq. yards, shown as 'AEFDK' in the site plan (Ex. P-1) was dismissed by the trial Court and she filed appeal before Additional District Judge, Amritsar. In appeal, defendants-appellants were proceeded *ex parte* and learned Ist Appellate Court remanded the case with observation that trial Court should give opportunity to plaintiff-respondent to place on file copy of *aks-shajra* and appoint a revenue officer as local commissioner to give report regarding exact position at the spot.

Learned counsel for the appellants submits that defendants-appellants were proceeded *ex parte* by the Ist Appellate Court without their due service. He has drawn my attention to interim orders passed by Ist Appellate Court, which have been formed part of grounds of appeal. Orders

dated 10.08.2015, 19.10.2015 and 20.11.2015 read as follows:-

Order dated 10.08.2015

“Notice issued to respondents has been received back with the report of incorrect address. Fresh notice to respondents be issued for 17.09.2015 on filing of RC/AD/PF and correct address within a week.”

Order dated 19.10.2015

“Notice to respondents could not be issued as correct address and RC/AD not filed. Let fresh notice to respondents be issued through RC/AD for 20.11.2015 on filing of RC/AD and correct address within a week.”

Order dated 20.11.2015

“Notice to respondents could not be issued as RC/AD not filed. Ld. counsel for the appellant has moved an application under Order 5 Rule 20 CPC that the address given by the appellant in the application is last knowing address as per the best knowledge of the appellant. In view of the facts and circumstances, application is allowed and the respondents is ordered to be summoned through publication in newspaper Chardi Kalan for 08.12.2015 on deposit of publication charges within a week.”

Learned counsel for appellants has argued that appellants are having their shop on main road in the village. They had put in appearance in the trial Court while their service is stated to have not been effected for want of correct address. Plaintiff-respondent was directed to send summons in registered covers but she deliberately avoided to file the registered covers/acknowledgment and got the service effected through alternate mode

of service.

Learned counsel for the respondent has argued that due service of appellants before lower Appellate Court was got effected through publication as per provisions of Order V Rule 20 CPC and order of remand passed by Ist Appellate Court will not prejudice the case of appellants, rather they will get the opportunity to lead evidence. In support of her contention, report of local commissioner will help the Court below to reach the appropriate conclusion regarding the averment of plaintiff-respondent that her 90 sq. yards area has been encroached by the appellants.

Perusal of interim orders, as discussed above, show that as per report on summons, defendants-appellants could not be found in village Jethuwal and plaintiff-respondent was directed to file their correct addresses and summons were ordered to be sent in registered covers. Neither correct addresses were filed nor registered covers were supplied and service of defendants-appellants was ordered to be effected through publication in newspaper 'Chardikala' for 08.12.2015. There is no explanation as to why plaintiff-respondent had avoided to file registered cover as per orders of the Court dated 10.08.2015 and 19.10.2015. In case summons had been sent in registered covers, postal authorities would have given the report as to whether summons have been sent at correct addresses or not. Ist Appellate Court has also not looked into this aspect while ordering service of defendants-appellants through publication in the newspaper. A prejudice had been caused to appellants as the matter was heard *ex parte*.

I am of the considered opinion that Ist Appellate Court has not adopted due process of law before ordering the service of defendants-appellants through publication. As per provisions of Order XLI Rule 21

CPC, Ist Appellate Court is directed to rehear the appeal after giving opportunity to both the parties to put forth their arguments.

As a sequel of my above discussion, this appeal is allowed and order of Ist Appellate Court dated 29.01.2018 is set aside.

Parties are directed to appear before the Ist Appellate Court/successor Court on 30.05.2019, on which date file of Civil Appeal No. 63 of 2015 shall be taken on board and proceeded further as per above observations.

May 02, 2019
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***