

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

**CR-360 of 2021 (O&M)
DATE OF DECISION : 08.03.2021**

Sheela Wati @ Sheela Kiran @ Sheela (since deceased) through her LR.

...Petitioner

Versus

Ravi Tandon

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Rajinder Goyal, Advocate
For petitioner.

Mr. Vikas Mehsempuri, Advocate
For the respondent.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

1. Grievance of the petitioners herein is qua dismissal of their application under Order 9 Rule 13 CPC seeking to set aside the *ex parte* order dated 05.09.2013 and resultant *ex parte* eviction order dated 02.07.2014 passed by the Rent Controller, Patiala.

2. The petitioners claim themselves to be successor-in-interest of deceased Ms. Sheela Wati @ Sheela Kiran @ Sheela, against whom rent petition was filed seeking her eviction under Section 13 of the East Punjab Urban Rent Restriction Act, 1949.

3. The respondent-landlord represented before the Rent Controller that service of Court summons was duly effected on Late Ms. Sheelawati by way of a *munadi* and also by affixation as well. Based on service report submitted by Process Server, the Rent Controller passed an order dated

05.09.2013 to proceed *ex parte* against the tenant Late Ms. Sheelawati. Later, *ex parte* eviction order dated 02.07.2014 was also passed against the tenant.

4. Resultantly, during her lifetime, the tenant Late Ms. Sheelawati vide application dated 10.09.2014 (Annexure P-4) sought to set aside the *ex parte* eviction order dated 02.07.2014 as well recalling of order dated 05.09.2013 vide which she was proceeded *ex parte*. However, before the said application could be decided, the tenant Late Ms. Sheelawati expired on 15.05.2017 and present petitioners, on the basis of a Will dated 16.04.2017 executed in their favour, vide application dated 15.11.2017 sought their impleadment as legal representatives of Late Ms. Sheelawati.

5. The said application was hotly contested by the landlord, both on the ground of locus as well as on the ground of veracity of the Will, which as per landlord, was not a legally admissible document. Ultimately, vide an order dated 08.02.2018 the Rent Controller partly allowed the application for impleadment of petitioners as legal representatives of Late Ms. Sheelawati, only for the limited purpose to contest the proceedings, without giving any finding as to whether the Will was validly executed or the present petitioners are legal representatives of Late Ms. Sheelawati, as claimed by them.

6. After passing of the said order, detailed issues were framed and respective evidence was led by both the parties qua recalling of *ex parte* order dated 05.09.2013 and eviction order dated 02.07.2014. One of the grounds taken to oppose the right of the petitioners to contest the rent proceeding was once again the same i.e. whether will was validly executed

in their favour and whether they can act as the legal representatives of Late Ms. Sheelawati, as claimed by them.

7. The objection of learned counsel for the petitioners is that once permission was granted vide order dated 08.02.2018, to contest the proceedings as legal representatives, the petitioners could not have been non-suited on the ground of locus-standi, is being noted only to be rejected. The permission granted by the Rent Controller to petitioners to contest vide order dated 08.02.2018 stood subsumed in the final order dated 02.07.2014 passed by the Rent Controller. The Court below was well within four corners of law to sift through the evidence and gave findings qua locus of the petitioner. The relevant para No.11 of the impugned order reads thus:-

“11. Further the applicants are appearing on the basis of a Will which is an unexecuted, unregistered document regarding which neither any case has been filed by the applicant either in the Civil Court or in the revenue Court for getting a declaration to the effect that now he along with Gagandeep Singh Advocate are the owners on the basis of Will. Said fact is admitted by AW.1 in his cross-examination that till date they have not got entered any mutation regarding unregistered Will dated 16.4.2017 nor has moved any application to M.C. Patiala regarding change of ownership in their name on the basis of Will. Further they have admitted that there is no entry in the revenue record qua the Will in his favour, as such the applicants are knocking on the doors of this Court on the basis of the Will but the respondents are alleging the application to be non-maintainable because the applicants are not related to said Sheela Kiran and no such declaration has been passed till date in their favour on the basis of said Will. Further while looking at the locus-standi of the applicant to file the present application, who is claiming his right on the basis of the Will, but has failed to prove his relations with said Sheela Kiran by leading any cogent oral or documentary evidence to this effect. Further other beneficiary Gagandeep Singh, Advocate is not known to him as admitted by AW.1 in his cross-examination. As such there is no evidence regarding inter-se relationship between both the beneficiaries. Further no mutation has been sanctioned till date and even no application has been moved in any Court either on the civil side or on the revenue side for getting declared themselves as the owner on the basis of the will. Even the report of the Expert who has been examined as RW.1 is also creating doubt regarding the

authenticity of the Will as said expert while deposing as RW.1 has clearly stated that the signatures Q2 on the Will is a product of copies forgery. Further no evidence has been led by the applicant to rebut said expert report.”

8. There is no room to interfere with the aforesaid findings returned by the Court below.

9. As regards service of summons, the findings are also against the petitioners, in as much, as it was held that service was validly effected on the predecessor-in-interest of petitioners and the pending *lis* was well within her knowledge. This Court refrains to interfere on that front as well, since I find no fault with the findings of the learned Rent Controller qua the same.

10. It would not be out of place to observe that reliance of learned counsel for the petitioner on the judgment rendered by this Court in **Babu Ram Bhatnagar Vs. Satish Kumar Rawal**¹ qua non-effecting of proper service on predecessor-in-interests of petitioners, is totally misplaced. While the proposition of law enunciated by learned Single Judge is not disputed either by learned counsel for respondent or even otherwise this Court also being in respectful agreement therewith, but the same is not applicable to the facts of present case.

11. It would be apposite to reproduce para No.13 of the judgment *ibid*, as below:-

“13. On an analytical examination of the entire case law cited at the bar and on pursuing Order 5 Rule 2, Civil Procedure Code, it can safely be held that attachment of the copy of the plaint or a concise statement thereof along with the summons is mandatory. No summons can be regarded to have been duly served unless it is accompanied by a copy of the plaint. ‘Due service’ means service of summons along with the plaint. It cannot be held that the word ‘due’ has been superfluously used by the Legislature. Compliance of the provisions of Order 5 Rule 2 Civil Procedure Code is a must and it cannot be held to be directory.”

12. What is stated above is in context of service of summons on the person along with copy of plaint. Here is a case where service was not only effected by process server in person on the predecessor-in-interests of petitioners, but by way of *munadi* and affixation as well. The factum of *munadi* is not disputed. *Munadi* is known to be valid mean of substitute service in case despite service a litigant does not cause appearance before the Court. Reference may be had to **Gurnam Kaur & Ors. Vs. Kulwant Singh**² . Relevant para No.8 thereof reads as under:-

“8. In the present case, there is a report of service dated 14.03.2004, duly signed by Dharam Singh Chowkidar as a witness because at the first instance, the Court had sent the summons through Process Server for effecting service upon the defendant personally. Order 5 Rule 9 of the CPC regarding service by way of registered post is an option with the Court, but the Court can always serve the defendant through the Process Server who delivers the summon of the Court to the defendant in person. Initially, on 22.01.2004, the Court had recorded that the defendant could not be served as the summons were received back unserved. Again the defendant was ordered to be served on 17.03.2004 by filing of PF. The Process Server has recorded in his report that Tara Singh had seen him and concealed himself in his house, meaning thereby he refused to take the summons or evaded service. The said report is duly witnessed by Dharam Singh Chowkidar. On 17.03.2004, the Trial Court had recorded in its zimni that summons sent to the defendant were received back with the report of evading service and in those circumstances, the Court had found that the defendant cannot be served in ordinary process and ordered the summons to be affixed on the outer door or some conspicuous part of his ordinary residence and that he be served through munadi. Since Dharam Singh Chowkidar, who stepped into the witness box as AW1, has indirectly admitted that a person came from the Court and took his signatures for the purpose of getting the service effected upon the defendant, therefore, it cannot be said that there was no effort made by the Court for effecting service upon the defendant personally at the first instance before resorting to the mode of substituted service. Thus, the judgment relied upon by the learned counsel for the petitioners in Dhanna's case (supra) is not inapplicable to the facts and circumstances of this case.”

13. To rebut the applicability of aforesaid judgment, argument of learned counsel for the petitioner that *munadi* is a weak mode of admissible evidence, has no relevance. What has to be seen is, the totality of circumstances. He does not dispute that service of summons was effected, but the objection taken is that there was an irregularity as the copy of petition was not served. Be that as it may, the fact of the matter is that it was well within the knowledge of predecessor-in-interest of the petitioners that there was a case pending against her qua which service of summons was effected. Even if it was not due complete service, but the fact that *munadi* was also effected, the petitioner cannot now be permitted to take refuge under the argument that it was a weak mode of evidence of service.

14. No grounds to interfere. Dismissed.

March 08, 2021
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No