

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

SECOND APPEAL NO. 16 OF 2022

Dinesh s/o Baban Jagtap

Vs.

Baburao s/o Baban Jagtap

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Prashik S. Gawai, Advocate for appellant.

CORAM : MANISH PITALE J.

DATE : 15.03.2022.

By this appeal, the appellant has challenged concurrent judgments and orders passed by the two Courts below. The appellant and respondent are brothers. The respondent had filed a suit for eviction and possession against the appellant. The Court of Civil Judge Senior Division i.e. trial Court found that the respondent i.e. (Original plaintiff) had supported his case by examining himself. The appellant was found to have been served with summons and yet he chose not to appear before the trial Court. In these circumstances, the trial Court considered the pleadings, evidence and material placed on record on behalf of respondent and decreed the suit.

2. The appeal filed by the appellant before the District Court was dismissed, by holding that the trial Court was justified in proceedings against the appellant, as there was valid service of summons and the appellant himself chose not to contest the matter.

3. Mr. Gawai, learned counsel appearing for the appellant argued only one contention before this Court that in the present case, both the Courts below failed to appreciate that summons were not duly served on the appellant and that therefore, the decree could not be passed against him, only on the basis of the pleadings, evidence and material placed on record by the respondent.

4. Reliance was placed on Order 5 Rule 15 of the Civil Procedure Code (CPC), to contend that the mandatory requirements under the said provision of law were not complied with and that this gives rise to substantial question of law in the present appeal.

5. Reliance was placed on the judgment of the Madhya Pradesh High Court in the case of ***Suresh Kumar Vs. Smt. Godaveriba, AIR 1992 Madhya Pradesh 205*** and Kerala High Court in the case of ***Abbas Vs. Moideen Kunhi and another, 2014 (3) KLT 872.***

6. This Court has considered the concurrent judgments and orders passed by the Courts below. The specific contention raised on behalf of the appellant is also considered. A perusal of the impugned judgment and order passed by the Appellate Court shows that there is elaborate discussion on the question of validity of service of summons in paragraph Nos.11 and 12 of the impugned judgment and order.

7. A perusal of the report of the bailiff shows that an attempt was made to serve the appellant and when he was not found, the summons were served on the father of the appellant. Being an adult member of the family residing with the appellant, service of summons in this manner clearly satisfied the requirement under Order 5 Rule 15 of the CPC.

8. Reliance placed on behalf of the appellant on the judgments of the Madhya Pradesh High Court in the case of *Suresh Kumar* (supra) and Kerala High Court in the case of *Abbas* (supra), cannot be of much assistance for the reason that in the case in which the Madhya Pradesh High Court rendered the said judgment, the father of the defendant had refused to accept service, thereby showing that the case is distinguishable on facts. The judgment of the

Kerala High Court interpreted Order 5 Rule 15 of the CPC lays down the requirements for valid service of summons. Even if the dictum laid down in the said judgment is to be applied to the facts of the present case, it becomes clear that summons were duly served on the appellant and he himself chose not to contest the matter on merits.

9. In view of above, this Court finds that no substantial question of law arises in the present appeal and accordingly, it is dismissed.

JUDGE