

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-898 of 2015 (O&M)
Date of decision: 29.10.2022

Kartar Singh through his LRs Sant Kaur and others

..Petitioners

Versus

Sukhpal Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. S.K.Arora, Advocate, for the petitioners.

Mr. Shubham Pathania, Advocate for
Mr. Prateek Gupta, Advocate, for the respondent.

ANIL KSHETARPAL, J(Oral)

Both the courts below have dismissed the application filed under Order IX Rule 13 CPC to set aside the ex-parte judgment and decree dated 08.04.2004.

The petitioner filed the application claiming that he was never served with a notice from the Court and the report of the process server dated 31.01.2004 showing the service of notice on the petitioner is wrong. He claims that he is not known as Sh. Kartar Singh @ Begh Singh. It is claimed that the thumb impression of some other person has been obtained on the summons in connivance with the process server and the chowkidar of the village.

Both the courts, on appreciation of the evidence have formed an opinion that the petitioner has miserably failed to prove this fact. It has been held that the petitioner claims that his brother Sh. Mukhtiar Singh is also known as Sh. Begh Singh, however, he never examined Sh. Mukhtiar Singh as a witness in the court. The courts have also found that though the

petitioner claims that he was never served with the notice and he did not append his thumb impressions on the summons, however, except his bald statement, he has not produced any evidence to prove that the thumb impression appended on the summons are forged. Moreover, no evidence has been led to prove that the process server or the chowkidar of the village were inimical to him.

This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

The learned counsel representing the petitioner contends that the onus was on the respondent to prove that he is known as Sh. Kartar Singh @ Begh Singh. He submits that in the absence of the evidence to that effect, the application filed under order IX Rule 13 CPC was required to be allowed.

This court has considered the submission, however, expresses its inability to accept the same. The onus to prove that the petitioner was not served with the notice of the court was on the petitioner. He had come to court claiming that someone else has appended his thumb impressions. This fact was required to be proved by the petitioner. Moreover, both the courts have formed an opinion on preponderance of probabilities. While exercising the revisional jurisdiction, this court does not find it appropriate to interfere.

Dismissed.

All the pending miscellaneous applications, if any, are also disposed of.

October 29, 2022

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**(ANIL KSHETARPAL)
JUDGE**

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