

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 5490 of 2019 (O&M)

Date of Decision: 23.05.2022

Dilshad Chand and Others

... Petitioner(s)

Versus

Rakesh Kumar and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Yagsimant Attri, Advocate
for Mr. Rajinder Goyal, Advocate
for the petitioner(s).

Mr. Sanjiv Kumar Aggarwal, Advocate
for the respondent No.1.

Anil Kshetarpal, J.

1. The petitioners' application for setting aside the *ex parte* judgment and decree has been dismissed by the trial Court as well as the First Appellate Court.

2. Six members of a family have entered into a joint agreement to sell with the plaintiff/respondent No.1 on 26.02.2011. At the time of execution of the agreement to sell, all of them gave their address as House No. 213, Old Housing Board Colony, Panipat. The plaintiff-Rakesh Kumar filed a suit for possession by way of specific performance of the agreement to sell. The address of the defendants was the same as noticed above. All the defendants were served through the defendant No.5-Krishan Chand (their brother). They did not chose to defend the suit. After the *ex parte* decree was passed on 05.01.2013. Defendant No.2 to 4 filed an application for setting aside the *ex parte* decree on the ground that they are residing at different places and were not duly served. Both the Courts below have found that the defendants were in knowledge of the pendency of the suit as they were properly served through defendant No.5 (their brother).

The learned counsel representing the petitioners contends that

the agreement to sell is forged as the petitioners have not signed it. On the other hand, the learned counsel representing the respondent No.1 has submitted that the signatures of the petitioners have been found to be genuine by the Handwriting and Fingerprint Expert.

4. Once the petitioners, while entering into the agreement to sell, have disclosed their address to be House No. 213, Old Housing Board Colony, Panipat, now, they cannot claim lack of knowledge of suit, particularly when they have been served through their brother, who had common interest in the subject matter. The agreement to sell was entered into by all the family members of late Sh. Ishwar Chand i.e. his widow and four sons and daughters. The defendant No.5-Krishan Chand was served with all the notices at their admittedly joint residential address given on the agreement to sell. He did not choose to contest. He has also not filed any application for setting aside the *ex parte* decree. There is no evidence of animosity between the family members or any purpose for hiding the notice of suit. The interest of all the defendants is common and identical.

5. Keeping in view the aforesaid facts, no ground is made out to interfere. Hence, the present revision petition is dismissed.

6. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

May 23, 2022
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No