

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

112

CR-6649-2017  
Date of decision: 27.07.2023

RAMKALI AND ANR

..Petitioners

Versus

MANJU AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vinod Gupta, Advocate  
& Mr. Mayank Gupta, Advocate  
for the petitioners.

Mr. Shailendra Jain, Sr. Advocate  
with Ms. Navneet Kaur, Advocate  
and Ms. Jaini Verma, Advocate  
for respondent No.1 to 5.

ANIL KSHETARPAL, J(Oral)

1. The petitioners herein were defendants in a suit for grant of decree of declaration that the plaintiff is the absolute owner by way of adverse possession of the suit land in which was decreed ex parte.
2. Through this revision petition, the petitioners assail the correctness of order passed by the trial Court which has been affirmed by the First Appellate Court while dismissing an application under IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") to set aside the above noted ex parte decree.
3. In order to comprehend the issue which arises for adjudication, it is important to take note of the brief facts.

4. It may be noted that two similar suits were filed by the respondents against the petitioners on the identical grounds. One of the said suits was contested by the petitioners and it was dismissed on merits. The aforesaid decree was upheld by the High Court in Regular Second Appeal and now it has become final. Another similar suit i.e. CS No.45-C dated 16.01.2004 filed with respect to another plots between the same parties with similar assertions was decreed ex parte, on 07.06.2005.

5. On the presentation of the plaint, the trial Court passed the following orders on the various dates of hearing:-

*“Office to report.*

*C.J. (Jr. D)/16-1-04*

*Sir,*

*The court fee is correct.*

*Reader to C.J. (Jr. D)/16-1-04*

*Present: Sh. C.S. Mehta, Adv. For plaintiff(s)*

*Office report perused. Suit received by assignment. It be checked and registered. Notice of the suit as well as stay application be given to defendant(s) for 22-1-04 on filing of PF and copy of plaint etc. Dast be given.*

*C.J. (Jr. D)/16-1-04*

*Present:- As above.*

*Summons of defendants received unserved. Adjournment requested. Fresh be issued for 1.3.2004 on filing of PF etc.*

*C.J.(JD)/22.1.04*

*Present:- As above.*

*Summons to defendants received unserved for want of correct address. Adjournment requested. Now defendants be again summons for 13.5.04 on filing of PF etc.*

*C.J.(JD)/1.3.04*

*Present:- Sh. C.S. Mehta, Adv. for plaintiff.*

*Summons to defendants received unserved for want of correct address. Adjournment requested. Now*

*the case is adjourned to 29.5.2004 for summoning of defendants by filing fresh PF and complete address.*

*C.J.(JD)/13.5.04.*

*Present:- Sh. C.S. Mehta, Adv. for plaintiff.*

*Case file put up today on the application moved on behalf of plaintiff for substitute service of defendants. Counsel for plaintiff Sh. C.S. Mehta, Adv. submitted that several summons including registered A.D. were issued to the defendants but each time it has been reported by the serving agency that defendants are not residing on the given address. Hence, counsel for plaintiff further argued that as defendants cannot be served in ordinary way therefore, they may be allowed to served through proclamation by bead of drum. After going through the case file and postal receipt this court reached at a considered opinion that defendants cannot be served in ordinary way. Hence, in the interest of justice, now defendants be served by way of Munadi for 29.5.2004 by filing munadi fee etc.*

*C.J.(JD)/13.5.04.*

*Present:- As above.*

*Munadi against defendants not received back. Adjournment requested. Now defendants be again summoned by way of Munadi of filing Munadi fee etc. for 29.5.04.*

*C.J.(JD)/29.5.04.*

*Present:- Sh. C.S. Mehta, Advocate for plaintiff.*

*Munadi against defendants not issued for want of munadi fee etc. Now munadi fee be filed within seven days, to come up on 10.6.04.*

*C.J.(JD)/29.5.04*

*Present:- As above.*

*Defendants served through munadi but not present despite repeated several calls since morning. It is now 12:30 P.M. Waited sufficiently. Hence defendants are hereby proceeded against ex parte. To come up on 7.8.04 for ex parte evidence.*

*C.J.(JD)/10.6.04"*

6. The petitioners (the defendants in the suit) filed an application under Order IX Rule 13 of the CPC to set aside the ex parte decree along

with a separate application for the condonation of delay in filing the application under Order IX Rule 13 of the CPC. It was specifically asserted that the defendant No.1 was residing in House No.531/2, near CAV School, Hisar, from the year 1975 to 1990/1991 along with her husband and children and in the year 1991, she shifted from Hisar and since then, she has been residing in Brij Vihar, Pitampura, New Delhi. Defendant No.2 stated that he is a permanent resident of House No.110/1, Prem Nagar, Hisar, for the last 20 years, though, previously he was a permanent resident of Village Bheria, Tehsil and District Hisar.

7. As already noticed, while filing the application for the condonation of delay, the petitioners asserted that although they came to know of the decree on 03.02.2006, however as a precautionary measure, an application for condonation of delay being filed. The application was contested and the Court in order to give opportunity to the parties framed the following issues:-

- “1. Whether the ex parte order dated 10.06.2004 as well as ex parte judgment and decree dated 07.06.2005 are liable to be set aside on the ground mentioned in the application? OPA*
- 2. Whether the application is hopelessly time barred? OPR*
- 3. Whether defendants/applicants have no sufficient cause for filing the present applicant? OPR*
- 4. Whether the application is false, frivolous and fictitious? OPR*
- 5. Relief.”*

8. The trial Court dismissed the application primarily on the ground that applicant No.2 in the affidavit filed in his evidence has disclosed that he is residing at Chandan Nagar, Balsamand Road, Hisar. The Court further held that the defendants have taken two contradictory stands as on the one hand, it has been stated that the application has been filed within the

limitation period, whereas, on the other hand, the condonation of delay has been sought by them.

9. The First Appellate Court while dismissing the appeal has recorded the following reasons:-

“The defendants have failed to disclose the reasons as to how late Sh. Suresh Kumar came to know about the decree and this fact is not disclosed in the application. The defendants have not proved that they are residing at the address disclosed by them in the application, though, ration card has been produced but not tendered in evidence. In the affidavit Ex.AW1/A filed in the evidence, the address of Chandan Nagar, Balsamand Road, has been disclosed. Defendant No.2, while appearing in evidence has failed to disclose the parentage and address of Sh. Suresh.”

10. The First Appellate Court apart from the aforesaid reasons held that no application for condonation of delay has been filed by the defendants. Both the Courts below also noticed that in other similar suit, the defendant had appeared when the summons were sent on the same address and filed affidavits showing the same postal address.

11. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record of the suit as well as the proceedings in the application filed under Order IX Rule 13 of the CPC.

12. In the application filed by the defendants, they have disclosed that the application is within the period of limitation from the date of

knowledge, however, the name of Sh. Suresh (the person from whom they came to know about the decree) was not disclosed. The evidence is not required to be made the part of the pleadings. Applicant No.2 Sh. Anand Dev while appearing in the evidence has disclosed that he was told about the Civil Court decree by his relative late Sh. Suresh. The statement was given by the applicant on oath. The applicant was not expected to enquire as to how late Sh. Suresh came to know of the ex parte decree.

13. The next reason assigned by the First Appellate Court is also erroneous because once the ration card was produced to prove that the applicants were not residing at the address disclosed in the plaint, the Court has incorrectly refused to admit the said evidence. The ration card was with respect to petitioner No.2 namely Sh. Anand Dev. This ration card reflected that he was residing at House No.83, Sector 81, Prem Nagar.

14. The learned counsel representing the petitioners while drawing the attention of the Court on the daily orders, which have been reproduced on page 2 of the judgment, submits that the Court without considering the fact that the process server has repeatedly informed the Court that the defendants are not residing at the given address, proceeded to order service through beat of drums at the same address where they weren't residing. He submits that both the Courts have also erred in overlooking the fact that while filing an application under Order IX Rule 13 of the CPC, the petitioners filed an application for condonation of delay. The learned counsel further submits that although the Court directed the plaintiff to submit the fresh address of the defendants, still, the Court ordered the service through beat of drums on the same address.

15. On the other hand, the learned Senior counsel representing the respondents submits that from perusal of an affidavit submitted by the defendants in evidence, it is evident that they were residing at Chandan Nagar, Balsamand Road, Bir, Hisar. He further submits that in the other suit, the defendants were served on the same address and they had the knowledge of the pendency of the suit as well as the decree passed in the suit.

16. This Court has considered the submissions while analyzing the arguments of the learned counsel representing the parties.

17. At this stage, it would be appropriate to extract para 1 of the application filed by the respondent in the suit under Order V Rule 20 of CPC for service of notice on the defendants by the beat of drums in the area, which reads as under:-

*“1. That the applicant/plaintiff deposited the expenses for service of defendants. Earlier respondent of process server and the report of process services again for 01-03-2003 is that defendants have left the place for the last so many years. The defendants cannot be served by ordinary process & regd. Post and no other place of residence or whereabouts are known to plaintiff/appellant.”*

18. As already noticed, the Court on the above noted application passed the order on 15.05.2004. In the considered opinion of this Court, once the Court's process server repeatedly informed the Court that the defendants are not residing at the given address and the plaintiff also stated that the defendants are not residing at the given address, the Court shall have insisted the plaintiff to furnish the correct address of the defendants or ordered the publication of notice in the newspapers. The order dated 15.05.2004, was passed in a casual manner without due consideration. As per the provisions of the CPC, the summons along with the copy of plaint

are required to be served on the defendants personally. Resort to the

substituted service can only be taken when the Court comes to a conclusion that the plaintiff despite his best efforts is unable to find the correct address of the defendants.

19. On 01.03.2004, the Court ordered the plaintiffs to furnish the correct address. On 13.05.2004, once again the trial Court found that in absence of the correct address, service of notice is not possible. However, within two days after the said order, the Court passed the order directing the service to the defendants through the beat of drums in the same area.

20. The Courts while passing the impugned orders have also overlooked the fact that in the plaint, the plaintiff did not disclose the house number of the defendants though, she was residing on the same locality. Moreover, the plaintiff while filing reply to the application filed to set aside ex parte decree has himself asserted that the husband of applicant No.1 was a defaulter of the Haryana Financial Corporation as well as the public as he failed to make the repayment of crores of rupees and the defendant-applicant ran away from Hisar city. This reply of the plaintiff was sufficient proof of the fact that the defendants were not residing at the given address.

21. It may be noted here that in support of the application filed under Order IX Rule 13 of the CPC, a joint affidavit was filed by both the applicants disclosing their addresses, which have been noticed above.

22. The applicant No.2 submitted affidavit in lieu of his examination-in-chief. In para 3 and 4 of the affidavits, the averments made in the application, which have been extracted above, were reiterated. However, inadvertently, the address of the deponent was copied from the plaint. The Courts below have failed to comprehensively read the affidavit filed in the evidence. Moreover, the process server in his report dated

21.01.2004, has stated that defendant No.1 has already sold the house and shifted to some other place. In such circumstances, the service of notice to the defendant No.1 by the proclamation of beat of the drums in that area was inappropriate. The Court should have ordered service of notice through publication in the newspapers.

23. As regards the argument of the learned Senior counsel representing the respondents that in the affidavit filed in evidence the defendants have disclosed the same address of Balsamand Road, Hisar, in the affidavits filed by them while filing evidence by way of affidavits, it may be noticed that while filing the application, the petitioners (defendants) in para B, C and D, specifically asserted as under:-

*“[B] That the defendants/applicants have never resided in the area of Chandan Nagar, Balsamand Road, Bir, Hisar. Even at the time of filing the present suit, they were not residing in Chandan Nagar, Balsamand Road, Bir, Hisar as mentioned by the plaintiff in the plaint.*

*[C] That as regards the defendant No.1, she was residing in House No.531/2, near CAV School, Hisar from 1975 to 1990/1991 along with her husband and children. In 1991, she shifted from Hisar and has been residing in Brij Vihar, Pitampura, New Delhi with her husband and the children.*

*[D] That as regards the defendant No.2, it is submitted that he is a permanent resident of House No.110/1, situated in Prem Nagar, Hisar for the last more than 20 years. Prior to this, he was a permanent resident of Village Bheria, Tehsil & District Hisar. His Ration Card and Voter List are also at the address of Prem Nagar, Hisar.”*

24. In abovesaid circumstances, it was the Court's bounden duty to examine the contents of the application filed by the defendants (petitioners herein). The affidavits filed in a routine manner would not result in effacing the positive stand of the applicants (defendants) in the application.

25. Moreover, Order V Rule 17 and also Order V Rule 20 (1A) of the CPC prescribes that the Court shall order summons to be served by affixing a copy thereof in some conspicuous place in the Court house and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided and carried on business or personally worked for gain. There was no compliance of the aforesaid procedure as well.

26. It may be noted here that the substituted service itself cannot be ordered in a mechanical manner. It presupposes due consideration and looking into the records by the Court concerned. It is not an idle formality. The purpose of substituted service is to make a sincere effort to inform the party about the pendency of litigation. Therefore, before ordering publication, the Court is expected to consider whether publication is necessary in the area where the defendants are expected to reside. The mere statement of the plaintiff that he cannot ascertain the address of the defendant without any proof of reasonable efforts having been made to find out his whereabouts is not enough to enable the Court to pass the order of the substituted service.

27. The First Appellate Court has also erred in overlooking the fact that a separate application for the condonation of delay was filed along with an application under Order IX Rule 13 of the CPC. The trial Court overlooked the fact that the application for condonation of delay was filed as a precautionary measure. There was no contradiction in the stand taken by the defendants. They specifically pleaded knowledge of the decree on 03.02.2006, whereas, the application under Order IX Rule 13 of the CPC was filed on 10.02.2006. Even then, they filed an application for condonation of delay in order to avoid a situation where the Court declines

their first plea. In such circumstances, the trial Court used an erroneous approach in observing that the defendants have taken a contradictory stand.

28. The next argument of the learned Senior counsel representing the respondent is with regard to the knowledge of the petitioners regarding the suit for grant of decree of declaration. In fact, the concept of the knowledge of the decree as used under Article 123 of the schedule attached to the Limitation Act, 1963, has been the subject matter of interpretation by the Courts from time to time. Ultimately in **Panna Lal vs. Murari Lal (dead) by LRs, AIR 1967 Supreme Court 1384**, the Supreme Court interpreted Article 164 of the Indian Limitation Act, 1908, in the following manner:-

*“(4) In Pundlick Rowji v. Vasantrao Madhav- rao, (1909) 11 Bom LR 1296 Davar, J., held that the expression "knowledge of the decree" in Art. 164 means knowledge not of a decree but of the particular decree which is sought to be set aside, a certain and clear perception of the fact that the particular decree had been passed against him. On the facts of that case, Davar, J., held that a notice to the defendant that a decree had been passed against him in the High Court suit No. 411 of 1909 in favour of one Pund- lick Rowji with whom he had no dealings was not sufficient to impute to him clear knowledge of the decree in the absence of any information that the decree had been passed in favour of Pundlick Rowji as the assignee of a promissory note which he had executed in favour of another party. This case was followed by the Calcutta High Court in Kumud Nath Roy Chowdhury v. Jotindra Nath Chowdhury, (1911) ILR 38 Cal 394 at p. 403. In Bapurao Sitaram Kar- markar v. Sadbu Bhiva Gholap, ILR 47 Bom 485: (AIR 1923 Bom 193) the Bombay High f Court held that the evidence of two persons t who had been asked by the plaintiff to te the defendant about the decree and to settle the matter was not sufficient to impose knowledge of the decree on the defendant within the meaning of Art. 164.C. J., said: Macleod,*

*"We think the words of the article mean something more than mere knowledge that a decree had been passed in some suit in some Court against the applicant. We think it means that the applicant*

*must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed to against him in a particular Court in favour of a particular person for a particular sum. A judgment-debtor is not in such a favour able position as he used to be when he had thirty days from the time when execution was levied against him. But we do not think that the Legislature meant to go to the other extreme by laying down that time began to run from the time the judgment- debtor might have received some vague information that a decree had been passed against him."*

*This decision was followed in Batulan v. S. K. Dwivedi, (1954) ILR 33 Pat 1025 at pp. 1050-8 and other cases. We agree that the expression "knowledge of the decree" in Art. 164 means knowledge of the particular decree which is sought to be set aside. When the summons was not duly served, limitation under Art. 164 does not start running against the defendant because he has received some vague information that some decree has been passed against him. It is a question of fact in each case whether the information conveyed to the defendant is sufficient to impute to him knowledge of the decree within the meaning of Art. 164. The test of the sufficiency is not what the information would mean to a stranger, but what it meant to the defendant in the light of his previous dealings with the plaintiff and the facts and circumstances known to him. If from the information conveyed to him the defendant has knowledge of the decree sought to be set aside, time begins to run against him under Art. 164.. It is not necessary that a copy of the decree should be served on the defendant. It is sufficient that the defendant has knowledge of the material facts concerning the decree, so that he has a clear perception of the injury suffered by him and can take effective steps to set aside the decree."*

29. A similar view has been expressed by the Punjab and Haryana High Court in **Smt. Kamal B vs. Jasmal, 1981 Punjab Law Reporter 482.**

30. The learned Senior counsel representing the respondents did not address any other argument.

31. With these observations, the revision petition is allowed. The orders dated 31.07.2013 and 12.12.2016 passed by the Courts below are set

aside and the civil suit is restored to its original number.

32. The parties through their learned counsels are directed to appear before the trial Court on 28.08.2023.

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

July 27<sup>th</sup>, 2023 (ANIL KSHETARPAL)  
Ay JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No