

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

CR-1011-2023(O&M)

Date of decision:-14.2.2023

Raj Kumar through his LRs

...Petitioners

Versus

Laxmi Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Tarun Dhingra, Advocate
for the petitioners.

H.S. MADAAN, J.

1. Briefly stated, facts of the case are that plaintiffs Laxmi Devi and others had filed a suit against defendant Raj Kumar through his LRs, seeking partition with consequential relief of permanent injunction. Notice of that suit was given to defendant 1(i) Roshni and 1(ii) Pardeep, who are wife and son of defendant Raj Kumar and they refused to accept the service and the Process Server accordingly made report in that regard. Thereafter, the trial Court directed that notice be issued to LRs of defendant by way of publication on 29.1.2015. The publication was accordingly effected. The LRs of defendant did not put in appearance and were proceeded against ex-parte. Thereafter, exparte evidence was recorded and suit was decreed by passing a preliminary decree. Subsequently a final decree was also passed.

2. The LR's of defendant Raj Kumar, namely, his wife Roshni and son Pardeep had filed an application for setting aside of ex-parte judgment and decree contending that they were never served in this case and had no knowledge about pendency of the suit; they came to know about the litigation when they inspected the case file, in which the Court had issued summons to defendants for appearance on 22.12.2014; as a matter of fact, the report by Process Server was false which was given in collusion with the plaintiffs and their non-appearance in the Court was not intentional or wilful, therefore the ex-parte orders and judgment and decree be set aside.

3. Notice of that application was given to the plaintiffs, who put in appearance through counsel and offered a contest stating that the story put forward by the applicants was wrong and incorrect; as a matter of fact they had knowledge of pendency of the suit and had refused to accept summons, thereafter they were duly served by way of publication but despite that they did not put in appearance and were rightly proceeded against ex-parte and ex-parte decree was passed against them. Therefore, there is no ground for setting aside of ex-parte orders, judgment and decree.

4. The parties were afforded adequate opportunities to lead evidence in support of their respective claims, which they availed of.

5. Vide a detailed order dated 14.11.2019, the application was dismissed by the Court of Civil Judge (Jr.Divn.), Gurugram.

6. Feeling aggrieved, the LR's of defendant had filed an appeal before District Judge, Gurugram and the same was also dismissed vide

judgment dated 21.4.2022.

7. Still feeling dissatisfied, the LRs of defendant have approached this Court by way of filing the present revision petition.

8. I have heard learned counsel for the petitioners besides going through the record and I find that there is no merit in the revision petition.

9. Here both the Courts in view of the pleadings of the parties and evidence brought on record by them are unanimous in coming to the conclusion that Smt.Roshni - wife and Pardeep – son of deceased defendant Raj Kumar had refused to accept the service of summons and when the summons sent for their service were received back with such report by the Process Server, then notice was ordered to be issued to them by way of publication in the newspaper, that too was effected but such LRs of defendant Raj Kumar had not put in appearance in the Court and were rightly proceeded against ex-parte. The story set up by the petitioners trying to justify their non-appearance in the Court on account of lack of knowledge regarding pendency of the suit was not found to be believable and plausible and was rejected.

10. The impugned orders passed by the Courts below are quite detailed and well reasoned and do not suffer from any illegality or infirmity and are not having any element of arbitrariness or perversity. The revisional jurisdiction of this Court is quite limited and considering the facts and circumstances of the case, there is no reason to interfere with the impugned orders by way of exercising the revisional jurisdiction.

11. Finding no merit in the revision petition, the same stands dismissed.

Since the main revision petition has been dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

14.2.2023

(H.S.MADAAN)

Brij

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No