



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

CR-2785-2024 (O&M)
Reserved on : 08.05.2024
Date of Decision :13.05.2024

Hardeep SinghPetitioner(s)
Versus
Tejinder Singh Kainth and OthersRespondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Navinder Jit Singh, Advocate for the petitioner.

ALKA SARIN, J.

1. The present revision petition has been filed challenging the order dated 09.02.2024 (Annexure P-5) whereby the application under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 for setting aside the *ex parte* judgment and decree dated 14.09.2015 has been allowed.
2. Brief facts relevant to the present case are that the plaintiff-petitioner herein filed a suit for a decree of declaration to the effect that he is the owner in possession of House No.37 Street No.3, Ferozepur Cantt. as well as other properties on the basis of a Will dated 15.03.2008 executed by Jeet Kaur widow of Kartar Singh. The defendant-respondents in the suit were proceeded against *ex parte* and an *ex parte* judgment and decree was passed on 14.09.2015. Subsequently, an application was preferred by the contesting defendant-respondent No.1 for setting aside the said judgment and decree on the ground that he was



never served in the case. The said application was contested by the plaintiff-petitioner. On the basis of the pleadings and the evidence led by the parties, the said application was allowed vide the impugned order dated 09.02.2024. Aggrieved by the same, the present revision petition has been preferred by the plaintiff-petitioner.

3. Learned counsel for the plaintiff-petitioner would contend that the defendant-respondent No.1 stood duly served and that publication was also done in the Tribune having circulation in Bathinda and therefore the defendant-respondent No.1 could not say that he was not served.

4. I have heard the learned counsel for the plaintiff-petitioner.

5. In the present case the address of the defendant-respondent No.1 as given in the plaint itself is of Québec Canada. Infact, the contesting defendant-respondent No.1, on whose behalf the application has been filed, lives in Québec Canada. The application was filed on the ground that the judgment and decree was passed without effecting proper service on the contesting defendant-respondent No.1 who is a NRI and had not come to India for the last more than 20 years. It was pleaded before the Court that the address as given in the plaint itself was wrong and that the plaintiff-petitioner herein was aware of the correct address as an appeal had been preferred by the defendant-respondent against the order passed by the SDM (W) Ludhiana on 31.01.2024 regarding the mutation No.32157 of Village Sunet, District Ludhiana before the Court of ADC Ludhiana. Despite the plaintiff-petitioner herein being aware of the correct address, he gave a wrong address in the plaint. The argument



of the learned counsel for the plaintiff-petitioner that the defendant-respondent No.1 stood duly served, hence, cannot be accepted. The second argument of the learned counsel that the defendant-respondent No.1 stood served by way of a publication also deserves to be rejected. Admittedly, the defendant-respondent No.1 is a Canadian resident. The address of the defendant-respondent No.1 given in the plaint is of Québec in Canada whereas the publication was done in the Bathinda Edition of the Tribune. It is not a case of the plaintiff-petitioner that the defendant-respondent No.1 was a resident of Bathinda. Order 5 Rule 20 CPC reads as under :

“20. Substituted service - (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the 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 or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

(1A) Where the Court acting under sub-rule (1) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating



in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

(2) Effect of substituted service - Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service substituted, time for appearance to be fixed - Where service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.”

6. The publication has to be in a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided or carried on business or personally worked for gain. In the present case even in the plaint the address given of the defendant-respondent No.1 is that of Québec in Canada. That being so, service by way of publication in the Bathinda Edition of the Tribune cannot in any manner be held to be valid service.

7. In view of the above, no fault can be found with the impugned order passed by the Trial Court. The present revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

13.05.2024
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO