

Date of Decision: 25.2.2014 Vs. Chanan and Others

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Court : Punjab and Haryana

Decided On : Feb-25-2014

Appellant : Date of Decision: 25.2.2014

Respondent : Chanan and Others

Judgement :

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH CR No.1397 of 2014 Date of Decision: 25.2.2014 Jaipal and othersPetitioners Versus Chanan and othersRespondents CORAM:- HON'BLE Mr.JUSTICE RAJIV NARAIN RAINA Present : Mr.H.S.Dhillon, Advocate for the petitioner 1.To be referred to the Reporters or not?.

2.Whether the judgment should be reported in the Digest?.

RAJIV NARAIN RAINA, J.

(Oral) I have heard learned counsel for the petitioners at length.

The petitioner was an ex parte decree holder against defendants no.8 and 10.

In the plaint, the petitioners/plaintiffs impleaded defendants no.8 and 10 as Chanan son of Sansara.

and Chanan son of Sansara son of Munishi., respectively.

These two defendants were among 16 defendants arrayed by the plaintiffs who are petitioners before this Court challenging the order setting aside the ex-parte decree and remitting the case for a fresh trial.

The application under Order 9 Rule 13 of the CPC for setting aside decree was rejected by the trial court and in appeal before the learned District Judge, Shaheed Bhagat Singh Nagar, the order of the learned trial court has been reversed by judgment dated 19.12.2013.

The learned District Judge has re-appreciated the evidence with regard to service of defendants no.8 and 10 and has harboured serious doubt whether it was defendant no.8 or defendant no.10 who were served.

The addresses of both the defendants in the plaint were Village Janipur, Tehsil Balachaur, District Nawanshahr. Khan Md. Firoz The learned District Judge has also noted that the respondents have not led 2014.02.26 16:58 I attest to the accuracy and integrity of this document punjab and haryana high court chandigarh CR No.1397 of 2014 :2: any evidence to the effect that defendants no.8 and 10 are one and the same person.

The learned District Judge has also opined that the best evidence would have been the testimony of Lehmbur Ram Chowkidar.

But the plaintiffs have chosen not to examine him.

RW1 Jagjiwan Ram is the sole witness of the plaintiffs to depose that Chanan was duly served, but the learned Appellate Court has found that his sole testimony is not sufficient to prove as to which of the two defendants were served.

Still further, the learned District Judge has noted that there is no document on the file to prove that earlier to 14.3.1996, the applicant was having knowledge regarding the pendency of the suit or the passing of the ex-parte judgment and decree against him.

The decree is dated 28.7.1998.

The application under Order 9 Rule 13 of the CPC was filed on 4.4.2011.

The date of knowledge has been taken as 14.3.2011 when the warrant of possession was served.

Resultantly, the learned District Judge has reversed the findings of the learned trial court on issues no.1 and 2.

I do not find sufficient reason to form an opinion other than the one which has been taken by the learned District Judge which is based on appreciation of evidence.

It is not the jurisdiction of this Court under Article 227 of the Constitution of India to re-appreciate evidence and to come to a different conclusion, even though it may look attractive.

I find no merit in this revision petition.

Dismissed.

(RAJIV NARAIN RAINA) JUDGE252.2014 MFK Khan Md.Firoz 2014.02.26 16:58 I attest to the accuracy and integrity of this document punjab and haryana high court chandigarh

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