



263 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-639-2017 (O&M)
Date of decision : 29.04.2025

MANAWATI DEVI

....Appellant

Versus

SANJHA RAM (DECEASED) THROUGH LRS AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ajay Jain, Advocate
for the appellant.

Mr. Ashok Verma, Advocate with
Mr. Satnam Singh Sishodia, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Defendant is in second appeal. For convenience and to avoid confusion, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the defendant and the respondents as the plaintiffs.

2. Plaintiffs filed suit for possession by way of pre-emption *qua* sale deed, dated 02.04.2014 in favour of the defendant claiming superior right being tenant over the land subject matter of the sale under pre-emption.

3. On 17th of January, 2015, Trial Court passed the following order :



“Present : Shri A.S. Beniwal, Advocate for plaintiff

The causal leave availed by the under signed has been got cancelled. Notice issues to defendant not received back. Now fresh notice to defendant be again issued for 31.03.15 on filing of copy of plaint and summons etc.

Sd/-
Civil Judge (Jr. Divn.)
Sirsa 17.01.2015”

4. On 19th of February, 2015, process server reported as under:

“Sir,

Today on reaching village Agroha effort was made to trace out Smt. Manawati Devi wife of Mahabir Prashad son of Moman Ram. However, all efforts proved futile. The witness present at the spot informed that village Agroha is a big village and persons from outside are residing here. Kindly furnish the Caste, Ward No., complete address so that the summons after service be forwarded.

Sd/- 19.02.2015”

5. On 31st of March, 2015, the Trial Court proceeded against the defendant/appellant *ex parte*, observing as under:

“Present : Shri A.S. Beniwal, Advocate for plaintiffs

Notice issued to the defendant through registered post received back with the report of refusal. Case called several times since morning. But none has appeared on behalf of the defendant. The mandatory period of one month has already been expired. Therefore, it is presumed that proper service has been effected upon defendant. Hence, defendant is hereby proceeded



against exparte. Now to come up on 05.05.2015 for exparte evidence of plaintiffs at own responsibility.

Sd/-
Civil Judge (Jr. Divn.)
Sirsa 31.03.2015”

6. It has been contended by counsel for the appellant Mr. Ajay Jain, Advocate that there is no report as has been recorded by the Trial Court vide order dated 31st of March, 2015. He thus submits that the proceedings at the back of the defendant/appellant, cannot be sustained. He further submits that after the suit filed by the plaintiffs was dismissed by the Court of the First Instance, in appeal preferred by the unsuccessful plaintiffs, no effort was made to serve defendant invoking Order XLI Rule 14 CPC. He thus submits that the judgments and decree(s) passed by both the Courts below without there being proper service on defendant, cannot be sustained.
7. Mr. Verma is unable to dispute the aforesaid position i.e. discernible from the record.
8. In view thereof, the judgments and decrees passed by both the Courts below, are hereby set aside having been passed without proper service on defendant.
9. The matter is remanded back to the Court of the First Instance to decide the same afresh from the stage of service of defendant.
10. Parties are directed to appear before the Trial Court on **02.07.2025**. On that day, the defendant shall file written statement.



11. Accordingly, the instant regular second appeal is allowed.
12. Pending application(s), if any, shall also stand disposed off.

April 29, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No