

2025:PHHC:099538



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

**CR-1807-2025 (O&M)**

**Reserved on : 15.07.2025**

**Pronounced on : 05.08.2025**

Dharminder Singh

....Petitioner

VERSUS

Mohinder Kaur & Anr.

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Rajan Singh Dadwal, Advocate for the petitioner.

Mr. Davinder S. Saini, Advocate for respondent No.1-caveator.

**ALKA SARIN, J.**

1. The present revision petition has been filed by the plaintiff-petitioner challenging the order dated 11.02.2025 passed by the Appellate Court whereby the appeal of the defendant-respondent No.1 was accepted and her application under Order 9 Rule 13 CPC was allowed.

2. One Ajmer Singh was married to Surinder Kaur. The said Surinder Kaur had two sisters - Mohinder Kaur (defendant-respondent No.1) and Jasvir Kaur (defendant-respondent No.2). Ajmer Singh died on 30.08.2012 while Surinder Kaur died on 07.04.2018. On 31.07.2018 the plaintiff-petitioner filed a suit for declaration claiming to being the owner and in possession of the suit land on the basis of a registered Will dated 27.12.2010 executed by Ajmer Singh. He also challenged the transfer deed executed by Ajmer Singh in favour of his wife Surinder Kaur and the mutation entries in her favour. Since Ajmer Singh and Surinder Kaur had

died without any issue, the two sisters of Surinder Kaur were impleaded as defendants in the suit. The defendant-respondent No.1 was proceeded against ex-parte in the suit while the defendant-respondent No.2 admitted the claim of the plaintiff-petitioner. Vide judgement and decree dated 03.01.2019 the suit of the plaintiff-petitioner was decreed ex-parte.

3. On 22.05.2020, during the Covid Pandemic, the defendant-respondent No.1 filed an application under Order 9 Rule 13 CPC for setting aside the ex-parte judgement and decree dated 03.01.2019 and deciding the case on merits after affording an opportunity to her. It was stated in the application that the plaintiff-petitioner had intentionally and wilfully given an incorrect address of the defendant-respondent No.1 because of which the defendant-respondent No.1 was never served in the suit. It was further stated that the defendant-respondent No.1 had been permanently residing in Canada since 2012 with her family. The plaintiff-petitioner filed a reply and contested the said application. Vide order dated 16.07.2024 the Trial Court dismissed the application under Order 9 Rule 13 CPC. However, vide order dated 11.02.2025 the appeal by the defendant-respondent No.1 was accepted by the Appellate Court and the application was allowed. Hence, the present revision petition by the plaintiff-petitioner.

4. The learned counsel for the plaintiff-petitioner contended that the defendant-respondent No.1 had knowledge of the hearing of the suit as well as about the judgement and decree dated 03.01.2019 passed against her but she deliberately and intentionally did not appear in the Court. It was urged that though the defendant-respondent No.1 has herself mentioned in

the application filed under Order 9 Rule 13 CPC that she came to know about the judgment and decree dated 03.01.2019 in the first week of March 2020 during her visit to India, but she filed the application under Order 9 Rule 13 CPC much later.

5. Per contra, learned counsel for the defendant-respondent No.1 (on caveat) submitted that the plaintiff-petitioner had intentionally and wilfully given an incorrect address of the defendant-respondent No.1 because of which the defendant-respondent No.1 was never served in the suit and as such the said judgement and decree cannot be sustained.

6. Heard learned counsel for the parties and perused the paperbook.

7. In the present case the plaintiff-petitioner filed the suit wherein the address of the defendant-respondent No.1 given in the plaint is “8 Snow Drift Trail, Brampton, ON L6R 3K1, Canada”. The zimni orders being reproduced hereinafter are as available on the website of the Trial Court at Jagraon. On 31.07.2018 the Trial Court passed the following order :

*“The present suit entrusted to self. It be registered. Let notice of this suit be issued to defendant No.1 for 28.08.2018 through speed post and notice to defendant No.2 be issued for the date fixed. Dasti process if requested be issued”.*

Thereafter, on 28.08.2018 the Trial Court passed the following order :

*“Summon issued to defendant No.2 received back served through husband but she has not come present today in the court. Case called several times since morning.*

*Therefore, defendant No.2 is hereby proceeded against exparte. Ld. Counsel for plaintiff has placed on record postal receipt of defendant No.1, which shows that period of 30 days has not been elapsed yet. Therefore, the case is adjourned to 13.09.2018 for awaiting appearance of defendant No.1”.*

On 13.09.2018 the Trial Court passed the following order :

*“Today the case was fixed for awaiting appearance of defendant No.1. But defendant No.1 has not appeared in the court. Case called several times since morning. Therefore, defendant No.1 is hereby proceeded against exparte. Today defendant No.2 appeared in person. Perusal of the file transpires that on the last date of hearing, defendant No.2 was proceeded against exparte. But as the case is at initial stage, therefore, defendant No.2 is allowed to proceed further with the present case. Statement of defendant No.2 Jasvir Kaur recorded, as per which she has stated that she has compromised the matter with the plaintiff and she has no objection if the present suit may be decreed. Now the case is adjourned to 06.10.2018 for exparte evidence of plaintiff”.*

On 03.01.2019 the suit was decreed ex-parte.

8. The defendant-respondent No.1 in her application filed under Order 9 Rule 13 CPC took the plea that the plaintiff-petitioner had intentionally and wilfully given an incorrect address of the defendant-

respondent No.1 because of which the defendant-respondent No.1 was never served in the suit. In her affidavit given in evidence the defendant-respondent No.1 mentioned her as being resident of “12320 70A Avenue 7093 House No. Surrey, British Columbia, V3W OR2” and stated that she “is permanently residing in Canada since 2012 along with her entire family and address mentioned in the main suit in totally wrong address of the deponent the deponent never reside on above said address till today ...”. However, when the defendant-respondent No.1 was cross examined by the counsel for the plaintiff-petitioner, no question or suggestion was put to her regarding her address in Canada. Similarly, the husband of the defendant-respondent No.1 in his affidavit given in evidence mentioned him as being resident of “12320, 70-A Avenue, 7093, House No.Surrey, British Columbia, V3W OR2” and stated that “Infact, Mohinder Kaur never reside on the address mentioned by the plaintiff in the main suit. Due to incorrect address, Mohinder Kaur never served in the main suit, because Mohinder Kaur wife of deponent residing with the deponent since 2012 in British Columbia, Canada. Neither Mohinder Kaur nor the deponent reside at any instance since 2012 to till date at the address given by the plaintiff in the main suit ...”. Nothing could be elicited in his cross examination about Mohinder Kaur’s address ever being the one given in the plaint.

9. The plaintiff-petitioner has been unable to explain as to how it could be held that the address of the defendant-respondent No.1 as given in the plaint was correct. Not a single document is forthcoming to show that the defendant-respondent No.1 ever resided at “8 Snow Drift Trail, Brampton,

ON L6R 3K1, Canada” which was her address given in the plaint. The address of defendant-respondent No.1 given in the plaint is of the province of Ontario in Canada while the address which the defendant-respondent No.1 claims as being correct is of the province of British Columbia in Canada. Both these provinces are on different coasts of Canada and are very far apart. Section 27 of the General Clauses Act, 1897 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. However, this presumption cannot be applied in the present case since the address of the defendant-respondent No.1 given by the plaintiff-petitioner is not her correct address.

10. It may also be mentioned here that Chapter 7F of the Rules and Orders of the Punjab and Haryana High Court, Volume IV, deals with ‘Service of the Processes of the Courts in India in Places Beyond India and Vice Versa’. Rule 1 provides as under :

*“1. Order V, Rule 25, of the Code of Civil Procedure provides, generally, that if the defendant resides out of India, and has no agent in India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate. In practice, all summonses so sent should, where possible, be sent by registered post, and should be ‘registered acknowledgement due’.”*

Thus, the summons to be served upon a defendant residing outside India should, where possible, should be sent by registered post with registered acknowledgement due. However, in the present case the zimni orders passed by the Trial Court (reproduced above) do not mention about summons being sent to the defendant-respondent No.1 by registered post with registered acknowledgement due. The zimni order of 31.07.2018 also only mentions that “*notice of this suit be issued to defendant No.1 for 28.08.2018 through speed post*”. Nothing has been brought on record by the plaintiff-petitioner to show that summons were actually sent to the defendant-respondent No.1 by registered post with registered acknowledgement due through speed post. Learned counsel for the plaintiff-petitioner is unable to point to any substantial and reliable evidence on the record to dislodge the findings recorded by the Appellate Court that the defendant-respondent No.1 was not properly served in the main suit. In the absence of such reliable evidence, the findings recorded by both the Appellate Court cannot be faulted. No other point was argued.

11. In view of the above, no mistake or error of jurisdiction or irregularity can be found with the impugned order passed by the Appellate Court. The revision petition being devoid of any merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

**05.08.2025**

*Aman Jain*

**(ALKA SARIN)**

**JUDGE**

*NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: Yes/No*