

**(2010) 10 P&H CK 0346**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** C.R. No. 5294 of 2008 (O and M)

Dhana APPELLANT

Vs

Smt. Mewa Devi RESPONDENT

**Date of Decision:** Oct. 26, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 9 Rule 13

**Citation:** (2010) 32 CriminalCC 283 : (2011) 2 RCR(Civil) 765 : (2010) 1 RCR(Criminal) 954

**Hon'ble Judges:** Alok Singh, J

**Bench:** Single Bench

**Final Decision:** Allowed

**Judgement**

Alok Singh, J.

Present petition is filed challenging the order dated 6.2.2008 passed by learned Civil Judge (Sr. Division), Hisar as well as order dated 12.9.2008 passed by Additional District Judge, Hisar, whereby application moved by the Defendant-Petitioner herein under Order 9 Rule 13 C.P.C. was rejected.

2. Brief facts of the present case are that suit for possession filed by the Plaintiff-Respondent herein was decreed ex-parte against the Defendant-Petitioner vide ex-parte judgment and decree dated 19.5.2003. After coming to know about the ex-parte judgment and decree, Defendant-Petitioner has moved an application dated 8.7.2003 for setting aside the ex-parte judgment and decree dated 19.5.2003 contending therein that Defendant was never served with the summon and no service was ever effect on the Defendant. It is also asserted in the application under Order 9 Rule 13 C.P.C. that Defendant-Petitioner came to know about the ex-parte judgment and decree dated 19.5.2003 when Plaintiff alongwith Police officials came to take possession of the suit land on 3.7.2003 and soon thereafter application was moved under Order 9 Rule 13 Code of Civil Procedure.

3. I have heard learned Counsel for the Petitioner and perused the record.

4. From the perusal of record, it reveals that Defendant-Petitioner was never served personally. Service was said to be effected on the Defendant-Petitioner through munadi only. If no personal service is effected on the Defendant-Petitioner and Defendant is said to be served by substituted service of munadi then heavy burden lies on the Plaintiff to prove that Defendant in fact was made aware about the filing and pendency of the suit.

5. In the present case, I do not find any cogent evidence on the record which can suggest that Defendant-Petitioner was made aware about the filing and pendency of the suit. Since, Defendant-Petitioner was not served personally and no effort was ever made to serve him through registered post also and no publication was ever effected in the newspapers having wide circulation in the locality where Defendant resides, I do not find that munadi service is sufficient to deny the setting aside of the judgment and decree.

6. Consequently, present petition is allowed. Impugned judgments are set aside. Ex parte judgment and decree dated 19.5.2003 is also set aside.

7. Parties are directed to appear before the learned trial Court on 15.12.2010. Defendant-Petitioner shall file his written statement before the learned trial Court on or before 15.12.2010. Thereafter, learned trial Court shall proceed with the case in accordance with law. Defendant-Petitioner shall pay Rs. 5000/- as costs in the Punjab and Haryana High Court Advocate's welfare fund within a week from today.