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**(1995) 05 P&H CK 0143**

**In the Punjab And Haryana At Chandigarh**

**Case No : Regular Second Appeal No. 124 of 1995**

Sarwan Singh

APPELLANT

Vs

Senior Sales Officer, Central Co-op.Bank, Hoshiarpur

RESPONDENT

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**Date of Decision : 08-05-1995**

**Acts Referred:**

**Citation :** (1995) 2 CurLJ 224 : (1995) 3 LJR 63 : (1995) PLJ 340 : (1995) 3 RRR 511

**Hon'ble Judges :** V.K.Jhanji, J

**Advocate :** Mr. G.S. Savra, Advocate, Mr. I.S. Bajwa, Advocate., Advocates for appearing Parties

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## **Judgement**

V.K. Jhanji, J.—This is plaintiff's appeal.

2. Plaintiff filed suit for permanent injunction restraining the defendants from making attachment by way of sale of residential house of the plaintiff situated in Khasra No. 23/19/2(119), 32/10(011) to the extent of 1/3rd share, ownership and in possession of the plaintiffs, situated in the area of village Bainch. H.B. No. 27, Tehsil Dasuya, as per copy of the jamabandi for the year 198990 with declaration that interest at the rate of 12 1/2% per annum and costs in the Award are illegal, unlawful and are liable to be set aside along with temporary injunction, restraining the defendants from attachment/sale of the above said house till the final decision of this case.

3. Defendants appeared and filed written statement taking preliminary objection that the suit in the present form is not maintainable and is liable to be dismissed as no notice under Section 79 of the Cooperative Societies Act has been served upon them.

4. From the pleadings of the parties, the following issues were framed.

(1) Whether the plaintiff is entitled to the injunction as prayed for ? OPP

(2) Whether the suit of the plaintiff is not maintainable in its present form ? OPD.

(3) Whether the suit is bad for want of service of notice under section 79 of the Cooperative Societies Act ? OPD.

(4) Relief.

5. Trial Court, vide judgment dated October 26, 1994 decided issues No. 1 and 2 in favour of the plaintiffs but dismissed the suit on the basis of the finding recorded on issue No. 3. Trial Court was of the view that suit is bad for want of service of notice under section 79 of the Cooperative Societies Act. In appeal, finding on Issue No. 3 has been maintained and in consequence thereof appeal has been dismissed in limine.

6. In this regular second appeal, counsel for the appellant has contended that once the Court gave a finding that notice under section 79 of the Cooperative Societies Act has not been served, it ought to have rejected the plaint instead of dismissing the suit. In this context, he referred to Order 7 Rule 11 of the Code of Civil Procedure, Clause (d) providing for the rejection of the plaint. Learned counsel for the respondent does not dispute this proposition of law. He fairly concedes that this appeal deserves to be allowed and instead of dismissing the suit, the plaint is to be rejected.

7. In view of the fair concession given by the learned counsel for the respondent, the judgment and decree of the Courts below are set aside and it is ordered that the plaint shall stand rejected.

8. With this modification, the appeal stands disposed of.