

HIGH COURT OF UTTARAKHAND AT NAINITAL

Appeal From Order No. 493 of 2019

Smt. Savitri Rahi

.....Appellant

Versus

Shri Chajju Singh Tomar alias Chandra Singh Tomar

.....Respondent

Present:-

Mr. Piyush Garg, Advocate for the appellant.

Mr. Neeraj Garg, Advocate for the respondent.

Hon'ble Ravindra Maithani, J. (Oral)

Instant appeal is preferred against the order dated 29.08.2019 passed in Misc. Case No. 482 of 2017, Smt. Savitri Rahi v. Chajju Singh Tomar *alias* Chandra Singh Tomar, by the court of Vth Additional District Judge, Dehradun ("the Misc. Case"), whereby the application filed by the appellant under Order 41 Rule 21 of the Code of Civil Procedure, 1908 ("CPC") seeking recall of the *ex parte* order dated 29.11.2016 has been rejected.

2. Heard learned counsel for the parties and perused the record.

3. The respondent filed the Original Suit No. 122 of 2013, Sri Chajju Singh Tomar *alias* Smt. Savitri Rahi, in the court of Civil Judge (Senior Division), Dehradun for cancellation of sale deed dated 06.01.2002 ("the suit"). The suit proceeded *ex parte*, but dismissed on 08.05.2014. Against it, the respondent preferred Civil Appeal No. 104 of 2014, Sri Chajju Singh Tomar *alias* Smt. Savitri Rahi, in the court of Additional District Judge, 7th, Dehradun ("the appeal").

4. In the appeal, on 02.02.2015, the court noted that the appellant was not residing at the address given in the appeal and had shifted at some other place. Therefore, the court ordered for publication of the notice and thereafter the appeal was allowed *ex parte* on 29.11.2016. The appellant thereafter filed an application for restoration of the appeal under Order 41 Rule 21 of the Code, which has been dismissed by the impugned order.

5. Learned counsel for the appellant submits that the appellant was not residing at the address as was given in the plaint of the suit; she had already shifted from there; in the appeal, though on 02.02.2015, the court had ordered for publication of the notice, but in the appeal, the court never recorded a finding that the service was sufficient on the appellant herein, and decided the appeal *ex parte*. It is argued that, in fact, the appellant had shifted from the given address; she had filed electricity bills, etc. also along with the restoration application, but it was wrongly not considered while passing the impugned order.

6. Learned counsel for the respondent submits that the appellant was very much residing at the given address; parties were litigating in the revision no. 109 of 2011-12 in the court of Additional Chief Revenue Commissioner, Uttarakhand ("the revision"), wherein the address of the appellant was the same as given in the suit and the revision was decided on 11.04.2017; till then, the address of the appellant was the same. It is argued that had the appellant been shifted from the address, she would have informed it in the revenue court, but she did not do so. In addition to it, learned counsel submits that in the restoration application, the appellant had given reasons

that she came to know about the judgment and order passed in the appeal in the last week of April, 2017, during the revenue proceedings, whereas the revision had already been decided by the revenue court on 11.04.2017. It is also argued that in the electoral roll of the children of the appellant, the address is the same, which is recorded in the plaint of the suit.

7. Rebutting the arguments of the learned counsel for the respondent, learned counsel for the appellant submits that if the appeal was pending when the revision was also pending and the appellant was not appearing in the appeal, the respondent could have brought this fact to the notice of the appellant in the revenue proceedings, but he did not do so. Although, at it, on behalf of the respondent, it is argued that if the appellant had changed the address, she could have corrected the address in the revenue proceedings also.

8. Facts remains that the suit was dismissed *ex parte* and in the appeal also the appellant did not appear and it was decided *ex parte* against her. In the appeal, the service was effected by publication of the notice, as stated by the learned counsel for the appellant. It has not been disputed.

9. Admittedly, in the appeal, on 02.02.2015 categorically the court had recorded that as per the report of the process server, the appellant was not residing at the given address as given in the plaint of the suit and she had shifted from there. It is thereafter, the court ordered for publication of the notice. The fact remains that thereafter the court in appeal never recorded a finding that the service is sufficient upon the appellant and the appeal has been decided.

10. With regard to the knowledge of the order passed in the appeal, learned counsel for the appellant further argued that though the revision was decided on 11.04.2017, but she received the copy of the order in the last week of April, 2017 and it is only then she came to know about the order passed in the appeal.

11. It is rebutted by the learned counsel for the respondent on the ground that what is pleaded by the appellant is that she came to know about the judgment passed in the appeal, in the revisional court in the last week of April, 2017.

12. Be that as it may, the fact remains that summons/notices were never served personally on the appellant. It was by way of publication in the appeal and when publication order was made on 02.02.2015, the court recorded a finding that as per process server's report, the appellant was not residing at the address given in the plaint. This finding was recorded in the presence of the respondent. If the appellant was residing at the same address, perhaps the respondent had an opportunity to inform the court at that stage only. Fact also remains that the revenue proceedings were pending between the parties at the relevant point of time. If the appellant was not appearing in the appeal, this fact definitely could have been brought to the notice of the appellant in the revenue court by way of filing an application or otherwise. But, it has also not been done.

13. Having considered, this Court is of the view that the appellant had shown sufficient cause for her non-appearance in the appeal. Therefore, the application under Order 41 Rule 21 of the Code ought to have been allowed by the court. Accordingly, while setting

aside the order dated 29.08.2019 passed in the Misc. Case, the matter needs to be remitted back to the appellate court to decide the appeal afresh.

14. The appeal is allowed.

15. The order dated 29.08.2019 passed in Misc. Case No. 482 of 2017, Smt. Savitri Rahi v. Chajju Singh Tomar *alias* Chandra Singh Tomar is set aside.

16. The appellate court is requested to hear and decide the Civil Appeal No. 104 of 2014, Sri Chajju Singh Tomar *alias* Smt. Savitri Rahi, after affording an opportunity of hearing to both the parties.

17. Let both the parties appear before the appellate court on 17.03.2026. It is quite an old appeal. Learned appellate court is requested to decide the appeal as expeditiously as possible, preferably within a period of three months from the date of receipt of copy of this judgment, without giving any undue adjournment to either of the parties. Learned counsel for both the parties have given an undertaking that they shall not take any adjournment.

18. Let a copy of this judgment along with the lower court record be forwarded to the court concerned.

(Ravindra Maithani, J.)
19.02.2026

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