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

**RSA-874-2021 (O&M)
Date of decision : 24.09.2024**

Municipal Corporation Yamunanagar & anr. Appellants

versus

Milap Singh & anr. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Rajesh K.Shoeoran, Advocate and
Mr. Hardeep Singh Poonia, Advocate
for the appellants.

PANKAJ JAIN, J. (ORAL)

1 Present appeal is directed against judgment passed by District Judge, Yamuna Nagar dismissing the appeal preferred by the defendants affirming the findings recorded by the Trial Court whereby application filed under Order 9 Rule 13 CPC by the defendants seeking setting aside of ex-parte decree dated 17.04.2014 stands affirmed. For convenience parties hereinafter are referred to by their original position in the suit i.e. the appellants as defendants and respondent No.1 as plaintiff.

2 Plaintiff-Milap Singh filed suit seeking decree of permanent injunction for restraining defendants from forcibly dispossessing him from the eastern portion of land measuring 1K-08M comprised in Khasra No.33/23, khewat No.241, situated at village Bhatouli, H.B.No.5, Tehsil Jagadhri, District Yamauna Nagar.



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3 Plaintiff claimed to have purchased suit land vide sale deed dated 04.05.2004 and constructed boundary wall. The case of the plaintiff was that without having any right, title or authority defendants were trying to construct the metalled road on his land. Defendants initially appeared and filed written statement. However, later on opted not to appear. They were proceeded ex-parte. Plaintiff proved on record copy of jamabandi Ex.P1 and copy of mutation Ex.P2 to show his title over the suit land. Suit filed by the plaintiff was decreed vide judgment and decree dated 25.08.2014. On 29.02.2016 present application was filed for setting aside ex-parte order dated 17.04.2014 and judgment and decree dated 25.08.2014. The plea taken was that the panel of advocates appointed as legal advisors for Municipal Corporation were superseded in the month of October, 2014 and thereafter no counsel was appointed and the defendants were not in the knowledge of ex-parte order dated 17.04.2014 and the ex-parte judgment & decree dated 25.08.2014.

4 Trial Court framed the following issues in the application :-

- “1. Whether the ex-parte order dated 17.04.2014 and ex-parte judgment and decree dated 25.08.2014 are liable to be set aside on the ground mentioned in the application? OPA*
- 2. Whether the application is not maintainable? OPR*
- 3. Whether the application is time barred? OPR”*

5 Returning finding on issue No.1 it was held that the defendants were contesting the suit and were in the knowledge of pendency thereof. However being a Local Government an attempt is being made to take refuge under the transfer of paiokar/ change of panel of the Advocates which is



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not permissible. The aforesaid finding has been affirmed by the Lower Appellate Court.

6 Learned counsel for the defendants is not in a position to dispute that even as per pleadings raised in the application the panel was annulled in October 2014 whereas the defendants were proceeded ex-parte vide order dated 17.04.2014 and even ex-parte judgment and decree was passed on 25.08.2014 i.e prior to the change in the panel. He also does not dispute that the defendants initially contested the suit and later on opted not to appear. Lower Appellate Court while recording the anguish observed as under :-

“18. It may be added here that since the Municipal Corporation is a corporation and has been constituted to safeguard the interest of the public at large and it appears from the case file that its functionary/officials are negligent in pursuing the case on behalf of the Municipal Corporation. Therefore, a copy of this order be sent to the Deputy Commissioner, Yamuna Nagar and Executive Officer, Municipal Corporation for taking necessary action against the defaulting officials so that there would no lapse in pursuing the cases relating to the public property and to safeguard the interest of the public at large.”

7 Thus this Court does not find any reason to interfere in the findings recorded by the Courts below.

8 I may hastenly add here that even from the *ex-parte* decree there is no serious prejudice caused to the defendants as vide impugned decree the defendants have been restrained from interfering in the

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possession of the plaintiff except in due course of law. The relief having been granted to plaintiff being of innocuous nature and defendants herein being Local Government governed by rule of law definitely is expected to take due course of law.

9 In view of above finding no merits in the present case, the same is dismissed.

(PANKAJ JAIN)
JUDGE

24.09.2024
Pooja sharma-I

Whether speaking/reasoned	Yes/No
Whether Reportable :	No/Yes