

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****130****RSA-2730-2024 (O&M)****Date of decision: 21.01.2025****Rampat****...Petitioner(s)****Vs.****Hemu Singh****...Respondent(s)****CORAM:****HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:-

Mr. Kshitij Bharati, Advocate for the appellant.

NIDHI GUPTA, J.

The defendant is in second appeal before this Court against the concurrent findings of the learned Courts below, whereby the application of the appellant/defendant under Order 9 Rule 13 CPC for setting aside the exparte judgment and decree dated 01.02.2003 (wrongly typed as 01.12.2003) (Annexure A-1) was dismissed by the learned Additional Civil Judge vide order dated 04.12.2017; **AND** the appeal there-against has been dismissed by the learned Additional District Judge vide impugned judgment and decree dated 09.10.2023.

2. The brief facts of the case as stated by the appellant are that the appellant and the respondent/plaintiff had purchased a plot measuring 300 Sq. Yards situated in Tehsil Bawal, District Rewari, jointly in equal shares vide Sale Deed No. 569 dated 02.03.1989. The suit property was to fall in equal shares upon the respondent and the appellant. Both the parties raised constructions on their respective share of land. However, the respondent while raising construction opened doors and windows towards the appellant's portion without any



consideration or authority. Subsequently, the plaintiff filed a Suit bearing No. 241 of 2000 seeking to restrain the defendant from closing these windows. The said suit was decreed ex parte vide judgment and decree dated 01.02.2003 (Annexure A-1). It is the case of the appellant that he discovered about the ex-parte decree only on 27.8.2013, when he went to the Police station. Accordingly, on 12.9.2013 the appellant filed the present application under Order 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 01.02.2003. Upon notice, the respondent/plaintiff had put in appearance and filed objections. In the said application, vide order dated 09.04.2014, the trial Court framed the following issues: -

- “(1) Whether the decree dated 01.02.2003 can be set aside on the grounds mentioned by applicant? OPA*
- (2) Whether the applicant is not maintainable in the present form? OPR*
- (3) Whether applicant is estopped by his own act and conduct? OPR*
- (4) Whether the plaintiff has inadvertently avoid the court?
OPR*
- (5) Relief.”*

3. Vide impugned order dated 04.12.2017, the said application was dismissed by the learned Additional Civil Judge (Senior Division) Rewari. The appellant filed an appeal dated 10.01.2018 against the said order; which was dismissed by the impugned judgment and decree dated 09.10.2023 by the learned Additional District Judge, Rewari. Hence, the present second appeal.

4. Ld. Counsel for the appellant/defendant assails the impugned judgments of the Id Courts below by *inter alia* submitting that



the appellant was wrongly proceeded ex-parte on the basis of a bogus report of refusal. It is contended that in actual fact, the respondent/plaintiff acted in collusion with the process server for obtaining false report on summons dated 11.07.2000 as per which the appellant had refused to accept the summons. Even Munadi was not carried out correctly in the village. The Lower Appellate Court has erred in holding that witnesses of both the sides supported their respective parties. As per the ID proof/resident proof put forth by the appellant, it is clear that he was working as Additional Reader to SP, Gurgaon. There is nothing to show that the appellant went back to the village Tihara on daily basis. Merely because the whereabouts of the appellant are not known after working hours, does not imply that he is residing in village Tihara. It is therefore prayed that the present appeal may be allowed and the impugned judgment and decree dated 04.12.2017/09.08.2024 passed by Court of Ld. Additional Civil Judge (Senior Division), Bawal vide which appellant's application under order 9 Rule 13 CPC for setting aside ex-parte judgment and decree dated 01.02.2003 (wrongly typed as 01.12.2003) (Annexure A-1) was dismissed; and further impugned judgment and decree dated 09.10.2023/31.05.2024 vide which appeal filed by the appellant against the order dated 04.12.2017/09.08.2024 was dismissed, being against the facts and law and based on conjectures and surmises are liable to be set aside, in the interest of justice.

5. No other argument is raised on behalf of the appellant.
6. Heard learned counsel for the appellant.



7. The respondent/plaintiff had filed the civil suit No. 241 of 2000. The record bears out that in the said suit, notice was issued to the appellant/defendant by the learned trial court on 5.7.2000 (Annexure A-5) for 13.7.2000. Vide report dated 11.7.2000 (Annexure A-3) the Process Server informed that the appellant had refused to accept summons and therefore Service was affected through affixation. However, even on 13.7.2000 the appellant failed to put in appearance before the learned trial court. As such, vide order dated 13.07.2000 (Annexure A-2) the appellant was directed to to be summoned for 22.07.2000 through Munadi. Munadi was duly carried out on 20.7.2000. As the appellant still failed to appear before the learned trial court, he was proceeded against ex parte vide order dated 22.7.2000; and ex parte decree dated 1.2.2003 was passed against the appellant.

8. It is the case of the appellant that on 11.7.2000, he was posted as Additional Reader with the SP Gurgaon, whereas Service was affected in village Tihara, and therefore, summons were not served upon him. I find no merit in the said contention of the appellant. The report of the Process Server is categoric in stating that summons was refused by the appellant; however, Service was affected through affixing summons and copy of plaint at the residence of the appellant. Nothing has been shown to this Court as to why the report of the Process Server should be doubted. Moreover, the onus to prove Issue no.1 was upon the appellant. However, he has failed to examine even the process server who had reported on the summon. Moreover, it was for the appellant to



prove his place of residence after office hours. Yet, the appellant has not even tendered any copy of Ration card or electricity bill to show that he was not residing at the place where the summons were issued to him.

9. Thereafter, even Munadi was got done on 20.7.2000. It has been contended on behalf of the appellant that no respectable person of the village like Chowkidar, Nambardar, Panch, or Sarpanch had put his signature on the Munadi dated 20.7.2000. However, it is the appellant who has failed to examine any of the witness of the Munadi or the process server reporting about the Munadi. In view of the above facts, the learned Courts below have correctly held that the appellant had failed to prove that he had no knowledge of the decree dated 1.2.2003. The conduct of the appellant is also evident from the above sequence of events.

10. It has also been submitted by the appellant that he discovered about this decree more than 10 years later only on 20.8.2013, when he went to the police station. This very contention of the appellant is blatantly misleading and liable to be rejected as admittedly, the plaintiff has been enjoying the fruits of the decree since 2003. In this circumstance, it is beyond belief that during the entire period of 10 years, the appellant would have no knowledge of the decree dated 2003.

11. The relevant findings of the learned lower Appellate Court in judgment and decree dated 09.10.2023 are contained in para Nos. 11 to 13, which read as follows:-



“11. Furthermore, perusal of summon dated 11.07.2000 shows that report of refusal was sent to the court on summon and the summon-and copy of plaint were affixed at the residence of applicant and thereafter, munadi had been effected. The applicant had not examined any of the witness of the munadi or called upon any process server reporting about the munadi.

12. Furthermore, the application had been moved by the applicant/appellant, so the onus was upon him to prove his case, but he had not even produced any copy of ration card or electricity bill in order to show that he was not residing at the place, where summons were issued to him. He had merely alleged that at that time, he had been posted as Additional Reader SP, Gurgaon.

13. Thus, the burden was upon the applicant/appellant to prove his place of residence, after office hours. Even, he had not taken a plea that he had been residing at Gurgaon. Meaning thereby, the applicant/appellant was though working at Gurgaon, but was not residing there, after office hours. So, the appellant/applicant had failed to discharge the onus upon him to prove that he had no knowledge of exparte decree dated 01.02.2003 for such a long period i.e. about ten years, despite the fact that the respondent had been enjoying the fruits of decree. Therefore, issue no. 1 was also rightly disposed off against the appellant/applicant by the learned lower court.”

12. In view of the above facts and findings, no ground is made out that calls for interference in the concurrent findings of the learned Courts below.

13. The present second appeal is hereby **dismissed**.

14. Pending applications, if any, stand disposed of.

21.01.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No