



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 5868/2019

1. Devkrishna S/o Late Prabha Devi W/o Ghisaram, R/o Kudiya Ka Baas, Tehsil Phulera, Jaipur
2. Rajkumar S/o Late Prabha Devi W/o Ghisaram, R/o Kudiya Ka Baas, Tehsil Phulera, Jaipur
3. Rishiraj S/o Late Prabha Devi W/o Ghisaram, Kudiya Ka Baas, Tehsil Phulera, Jaipur

----Appellants

Versus

1. Kaluram S/o Trilokchand, R/o Village Chakramasar, Tehsil Jaipur Jaipur
2. Ramlal S/o Hanuman, R/o Village Chakramasar, Tehsil Jaipur Jaipur
3. Ramesh Kumar S/o Ghisaram, R/o Mundota, Tehsil Amer, Jaipur

----Respondents

For Appellant(s)	:	Mr.Himanshu Sogani
For Respondent(s)	:	Mr.J.P. Goyal, Sr. Adv. with Mr.Abhi Goyal Mr.Ronak Bansal & Ms.Jyoti Swami

**JUSTICE ANOOP KUMAR DHAND
Order**

19/01/2026

Reportable

1. By way of filing the instant civil misc. appeal, a challenge has been led to the impugned order dated 09.04.2019 passed by the Additional District Judge No.4, Jaipur, District Jaipur (hereinafter referred to as 'the trial Court') by which the application filed by the defendants-petitioners (hereinafter referred to as 'the defendants') under Order 9 Rule 13 CPC for setting aside the ex-parte judgement and decree dated 23.12.2011 has been rejected.
2. Learned counsel appearing on behalf of defendants submits that a suit for cancellation of registered sale deed was filed by the



plaintiffs-respondents against the defendant and against one person who was witness of execution of the aforesaid sale deed.

3. Counsel submits that notice of the aforesaid suit was issued to the defendants on 04.03.2008 and on 10.03.2008, the Process Server submitted a report that the defendants have refused to accept the notice of the plaint and on the basis of the aforesaid report, the trial Court proceeded ex-parte by passing an order dated 14.03.2008 and thereafter, the suit was decreed ex-parte vide judgment dated 23.12.2011.

4. Counsel submits that deliberately and intentionally one witness of the aforesaid sale deed was impleaded as defendant in the suit, who was neither a necessary nor a proper party, but in spite of the above, he was impleaded as party in the array of cause-title. Counsel submits that the aforesaid witness, after service, submitted an admitted written statement in favour of the plaintiffs and on the basis of the averments admitted by him in his written statement, the suit was decreed ex-parte.

5. Counsel submits that in fact two different sale deeds were executed between the parties on the same date. Since one of the suits was related to lesser amount, hence, the same was preferred before the Court of Civil Judge and there also, the ex-parte proceedings were initiated and ex-parte decree was passed against the defendants, but the said suit was decreed, against which an appeal was preferred by the plaintiffs before the Appellate Court, however, the said appeal was rejected, hence, the judgment passed by the Civil Court has attained finality. Counsel submits that even the defendants appeared before the Appellate





Court in the said appeal, where also the plaintiffs never apprised the defendants about passing of the ex-parte decree in the instant case, hence, the defendants were not aware about the aforesaid ex-parte decree dated 23.12.2011. Counsel submits that incorporating all these facts, an application under Order 9 Rule 13 CPC was submitted before the trial Court for setting aside the ex-parte decree, which came to be dismissed vide order dated 09.04.2019.

6. Lastly, counsel argued that on the basis of the testimony of the witnesses, in whose presence the notices were alleged to be affixed on the conspicuous place at the residence of the defendants, the refusal report was submitted by the Process Server, were not the residents of the area, where the defendants are residing. The defendants are the residents of Village Kudiyon Ka Baas, Tehsil Phulera, District Jaipur, whereas both the above witnesses are residents of some other village, i.e., residents of nearby Village Mundota. Hence their presence on the place of residence of the defendants is doubtful. He further submits that even these two witnesses were also not produced in the witness box in support of the refusal report submitted by the Process Server. Hence, under these circumstances, interference of this Court is warranted and the ex-parte decree dated 23.12.2011 passed against the defendants is liable to be quashed and set-aside.

7. *Per contra*, learned counsel appearing on behalf of the plaintiffs-respondents (hereinafter referred to as 'the plaintiffs') opposed the arguments raised by counsel for the defendants and



submits that the defendants were well-aware about filing of the suit and one Ganpat Singh was also tracking the pending proceedings on their behalf.

8. Counsel submits that intentionally and deliberately the defendants did not appear before the trial Court to delay the disposal of the suit. Counsel submits that when an application under Order 9 Rule 13 CPC was rejected, the reason of getting knowledge has been prescribed as that one Bansidhar Jat, Adv. informed the said Ganpat Singh about passing of the ex-parte decree dated 23.12.2011. Counsel submits that neither the Bansidhar Jat nor the Ganpat Singh have been examined, hence, under these circumstances, it cannot be believed that the defendants were not having any knowledge about pendency of the suit against them. Counsel submits that the defendants were well-aware about pendency of the suit against them and the trial Court has not committed any error in passing the ex-parte decree on account of the absence of the defendants. He further argued that there is no substance in the arguments of the counsel for the defendants inasmuch as the two witnesses of the refusal report of Process Server were not required to be examined by the trial Court, as the report submitted by the Process Server is valid and no doubt can be raised upon such report. Counsel submits that the defendants could have submitted an application for summoning these two witnesses, but no such application was submitted on their behalf. Counsel submits that considering the overall facts and circumstances of the case, the application submitted by the defendants under Order 9 Rule 13 CPC has been rightly rejected





by the learned trial Judge by passing a reasoned and cogent order dated 09.04.2019, which requires no interference of this Court and the instant appeal is liable to be rejected.

9. Heard and considered the submissions made at the Bar and perused the material available on record.

10. Perusal of the record indicates that two different registered sale deeds were executed by the seller in favour of the purchaser on the same day. It appears that the original purchaser passed away and after her death, the suit for cancellation of sale deeds have been submitted against her legal representatives, i.e., the defendants before two different Courts, i.e., one before the Civil Judge and another before the Additional District Judge No.4 Jaipur, District Jaipur based on the fact that the valuation of one suit was lesser and valuation of the instant suit was slight higher. It appears that in both the suits, notices were issued to the defendants and in both the suits, the defendants remained ex-parte and ex-parte decree was passed on the basis of the report furnished by the Process Server.

11. It is worthy to mention here that the suit filed before the Civil Court was rejected against which an appeal was preferred, however, the same was also rejected against which no further appeal or revision has been preferred, hence, the said judgment passed by the Civil Court has attained finality. It is worthy to note here that though the defendants remained absent before the trial Court and before the Civil Court, but they were served before the Appellate Court, but the fact of passing of the ex-parte judgment





and decree dated 23.12.2011 was not apprised to the defendants by the plaintiffs before the Appellate Court.

12. This was the precise reason for which the suit has been decided ex-parte against the appellant and it is the case of the appellants that within three days of issuance of notice, the Process Server has submitted a report of refusal as if the defendants have refused to accept the notices of the plaint. It is worthy to note here that the report of Process Server bears signatures of two witnesses Godaram S/o Mansa Ram and Shankar Lal S/o Mahadev Jat, but they are not the residents of the place where the defendants are residing, i.e., Village Kudiyon Ka Baas, Tehsil Phulera, District Jaipur and on the contrary, these two witnesses are the residents of nearby Village Mundota. Hence, their presence on the place of residence of the defendants at the time of affixation of the notices at the house of the defendants appears to be doubtful.

13. It is settled proposition of law that if any ex-parte decree is passed on the basis of refusal of notice, the Court below is duty bound to examine the process-server. Herein the instant case, neither the process-server nor the witnesses were examined by the trial Court before initiating the ex-parte proceedings against the defendants and before passing the ex-parte decree against the defendants dated 23.12.2011.

14. The provision of service of summons are mentioned in Order V Code of Civil Procedure. The reference to provisions of Order V Rules 17 and 19 Code of Civil Procedure are relevant in the facts of this case and the same are reproduced as under:



"17. Procedure when defendant refuses to accept service, or cannot be found.—Where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, 2 [who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time] and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

19. Examination of serving officer.—Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit."

15. Perusal of Rules 17 and 19 of Order V of the Code of Civil Procedure shows that in order to accept the service as valid service, particularly, when the report is to the effect that the respondent refused to accept the summons then, it become duty of the Court to examine the Process Serving Officer if his report is not on affidavit. Even if the Process Serving Officer gives his report on affidavit, discretion is with the Court to examine the Process Serving Officer in order to ascertain, whether his report of is correct or not in order to hold the service valid. After complying



with these mandatory requirements, the Court is required to declare, whether the summons is duly served or not.

16. Harmonious construction of Rules 17 and 19 of Order V of the Code of Civil Procedure goes to show that acceptance of report of the service of the summons is a serious and solemn act and not merely an empty formality. Object to serve summons on the respondent is to enable him to know about institution of the proceedings against him and enable him to resist the said proceeding filed against him. Law of procedure is framed in such a manner that principle of natural justice is scrupulously followed. The basic requirement of this rule is that the decision should not be reached behind back of the affected party and such party should not be precluded from participating in the proceeding. Therefore, it becomes the prime duty of the Court concerned to see that all procedural requirements are duly adhered to prior to proceeding ex-parte against the concerned party to the litigation.

17. Proof of the service of summons is essential condition for proceeding ex-parte against the concerned defendant. It was incumbent on the part of the trial Court to examine the Process Server and the witnesses of the refused notice/summon on oath. Obviously, the intention of such examination is to see that chances of a false endorsement of such attempt to serve the summons and refusal thereof are minimized. In the instant case, name of one of the defendant No.3 is disputed and presence of the affixation witnesses, who are not residents of the same vicinity is doubted. Even these witnesses have also not been examined in the witness box. The suit has been decreed ex-parte on the basis of admitted





written statement of the defendant No.4 who is simply an attesting witness of the registered sale deed. Hence, considering all the facts and circumstances, it was unsafe to proceed against the defendants ex-parte.



18. The primary function of the Court is to adjudicate the dispute between the parties and advance the substantial justice. Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redressed of the legal injury so suffered.

19. This Court finds that the reasons of delay in filing the application under Order 9 Rule 13 CPC along with delay condonation application under Section 5 of the Limitation Act have been well explained by the defendants.

20. In view of the above, this Court is not satisfied with the finding of facts recorded by the learned trial Judge while rejecting the application submitted by the defendants for setting aside the ex-parte decree/ judgment dated 23.12.2011. The impugned order dated 09.04.2019 and the ex-parte judgment and decree dated 23.12.2011 is not sustainable and is liable to be and is hereby quashed and set-aside and the application submitted by the defendants under Order 9 Rule 13 CPC stands allowed and the instant civil misc. appeal stands allowed on the following terms and conditions:-



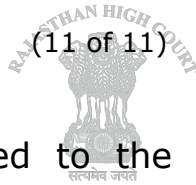
(I) The defendants would pay a sum of Rs.25,000/- to the plaintiffs within a period of 15 days from the date of receipt of certified copy of this order.

(II) The defendants would plant 25 shade bearing trees in their vicinity in public area. The aforesaid process would be carried over by them within a period of two weeks from the date of receipt of the copy of this order and they are further directed to look after these shade bearing trees.

(III) The defendants would submit the photographs of these shade bearing trees along-with an undertaking before the trial Court to show that the Condition No.II imposed by this Court which has been duly complied with by them and they would take care of these plants till it grows and gets in proper shape and they would submit the actual photographs of these trees at the end of every three months in every year till disposal of the suit.

21. The reasons for passing this present order directing the defendants to plant 25 shade bearing trees is in the interest of the public at large and for the greater public good. Planting trees as directed above, is one such initiative, which this Court considers to be appropriate, as trees, for as long as they thrive whether for decades or centuries will continuously and silently offer numerous benefits to the city and the surrounding community. Future generations will benefit from a cleaner, fresh and oxygen-rich environment.





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22. The matter is remitted to the learned trial Judge for its adjudication, after taking the written statements of the defendants on record. The parties are directed to appear before the trial Court on 16.02.2026.



23. Considering the overall facts and circumstances of the case that the suit pertains to the year 2010 and more than 15 years have passed, hence, it is expected from the trial Court to make all possible endeavors to expedite the proceedings of the suit without entertaining unnecessary request of adjournment to be made by either side and decide the suit expeditiously as early as possible on its merits on the basis of the evidence led by both the sides.

23. Stay application and all pending application(s), if any, also stands disposed of.

(ANOOP KUMAR DHAND),J

Aayush Sharma/11