

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

115

SAO-29-2017 (O&M)  
Date of decision: 29.04.2025

RAM HET &amp; ORS

..Appellants

Versus

PIRTHI &amp; ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

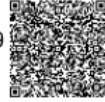
Present: Mr. S.K. Garg Narwana, Sr. Advocate  
with Mr. Vishal Garg Narwana, Advocate  
Mr. R.P.S. Jammu, Advocate  
for the appellants.

Mr. Devender Kumar, Advocate  
for respondents.

**ANIL KSHETARPAL, J(Oral)**

1. The defendants assail the correctness of concurrent orders passed by the Courts below while refusing to set aside ex parte decree.
2. In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.
3. Sh. Shiv Sahai son of Sh. Hari Ram and Sh. Dharam Pal son of Sh. Het Ram filed suit on 07.04.2003 for grant of decree of declaration that they have become owner of the property being occupancy tenants under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.
4. In the aforesaid suit, defendants filed written statement and issues were framed.
5. On 11.06.2008, the trial Court passed the following strange order:-

*Present: Sh. Mamraj Sharma, counsel for the plaintiff.  
Sh. L.P. Mangla, counsel for the defendant.*



*No ex parte evidence is present. Adjournment is requested. To come up on 15.09.2008 for ex parte evidence.*

*ACJ(SD) Hathin  
11.06.2008”*

6. It is evident that on the one hand, the presence of Sh. L.P. Mangla, Advocate, representing the defendants has been marked, whereas, the Court has observed that no *ex parte* evidence is present.

7. In fact, previously the proceedings were pending in the Court of Additional Civil Judge, Senior Division, Nuh, which was subsequently transferred to the Court of Additional Civil Judge, Senior Division, Hathin. 11.06.2008 was the first date of appearance before the Court of Additional Civil Judge, Senior Division, Hathin.

8. The Court thereafter proceeded with the case as the defendants were not represented, however, there is no specific order whereby the Court proceeded against *ex parte* against the defendants. There is also no order that the defendants have sufficient notice of transfer of the proceedings in the civil suit from Nuh to Hathin. The *ex parte* decree was passed on 16.07.2010. On 15.12.2010, the application under Order IX Rule 13 of the Code of Civil Procedure, 1908, was filed, to which reply was submitted. The trial Court proceeded to frame the following issues:-

*“(1) Whether the ex parte order dated 21.12.2010 and ex parte judgment and decree dated 16.07.2010 are liable to be set aside and applicants are entitle to be defend their case on merits as alleged? OPA*

*(2) Whether the application is not maintainable in the present form? OPR*

*(3) Relief.”*

9. It is evident that while culling out the issue No.1, the Court failed to take notice that there is no *ex parte* order on 21.12.2010 because the



suit itself was decided on 16.07.2010. It is obvious that there were multiple errors in the proceedings before the trial Court.

10. Both the Courts dismissed the application in a mechanical manner.

11. Learned counsel for the parties do not dispute that there is no order passed by the Court proceeding against *ex parte* against the defendants on 11.06.2008.

12. As already noticed, previously the proceedings were pending in Nuh, which were subsequently transferred to Hathin. Hence, the Court was under obligation to ensure that there was sufficient notice to the defendants with regard to transfer of the suit from Nuh to Hathin.

13. Consequently, the appeal is allowed. The impugned orders passed by the Courts below are set aside and the *ex parte* decree on 16.07.2010 is also set aside. The suit filed by the plaintiffs is restored to its original number and the Court is requested to proceed with the case.

14. The parties through their learned counsel are directed to appear before the Court of Additional Civil Judge, Senior Division, Hathin on 29.05.2025.

15. All the pending miscellaneous applications, if any, are also disposed of.

**April 29<sup>th</sup>, 2025**

*Ayub*

**(ANIL KSHETARPAL)  
JUDGE**

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