

KADW410001742023



Presented on : 17-06-2023
Registered on : 20-06-2023
Decided on : 26-03-2026
Duration : 2 years, 9 months, 9 days

IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,
AT KUNDGOL

Present : Abdul Khadar, B.A. LL.B.,
Senior Civil Judge & JMFC.
Kundgol.

Dated this the 26th day of March - 2026

Misc. No. 04/2023

Petitioner:

Shivalingappa S/o Basappa Bendigeri,
Age: 63 Years, Occ: Agriculture,
R/o: C/o: R G Meharwade,
H No: 27, Anand Nagar Main Road,
Old Hubballi, Hubballi,
Dist: Dharwad-580024.

(By Sri. SGB., Advocate)

//VS.//

RESPONDENTS :

1] Siddappa S/o Basappa Bendigeri,
Age: 65 Years, Occ: Agriculture,

R/o: Tadas, Tq: Shiggaon,
Dist: Haveri-581212.

2] Chandrakant S/o Basappa Bendigeri,
Age: 61 Years, Occ: Agriculture,
R/o: Tadas, Tq: Shiggaon,
Dist: Haveri-581212.

3] Smt. Tirakavva W/o Fakkirappa
Kankanwad, Since dead by her LR's

3 (a) Supriya W/o Basavaraj Hosur
Age: 42 years, Occ: Teacher
R/o: MIG-2-324, Kuvempu Nagar, 3rd
Cross, Bellari-583104.

4] Smt. Shivakka W/o Chikkappa
Baddi, Age: about 68 Years,
Occ: Household work, R/o: Devagiri,
Tq: & Dist: Haveri-581110.

5] Smt. Shanta W/o Yallappa Kusugal,
Age: about 66 Years,
Occ: Household work,
R/o: Varur, Tq: Hubballi,
Dist: Dharwad-581207.

6] Mallikarjun S/o Yallappa Baddi,
Age: about 47 Years, Occ: Agriculture,
R/o: Devagiri, Tq: & Dist: Haveri-

581110.

7] Smt. Maheshwari D/o Yallappa Baddi, (Smt. Maheshwari W/o Manjunath Burli) Age: about 43 Years, Occ: Household work, R/o: Devagiri, Tq: & Dist: Haveri-581110.

8] Dyamanna S/o Yallappa Baddi, Age: about 41 Years, Occ: Doctor, R/o: Devagiri, Tq: & Dist: Haveri-581110.

9] Shambulinga S/o Yallappa Baddi, Age: about 39 Years, Occ: Doctor, R/o: Devagiri, Tq: & Dist: Haveri-581110.

10] Rashid Khan S/o Ameer Khan Airani, Age: about 58 Years, Occ: Agriculture, R/o: Tadas, Tq: Shiggaon, Dist: Haveri-581212.

(R-1 by Sri. CMK, Advocate)
(R-2 by Sri. PCK, Advocate)
(R-3(a) by Sri. SCS, Advocate)
(R-10 by Sri. VSK, Advocate)
(R-4 to 9 – Exparte)

ORDERS

The petitioner has filed this petition Under Order 9 Rule 13 R/w Sec.151 of CPC seeking set aside the

exparte judgment and decree dated 17.4.2023 passed in FDP No.3/2019 by re-open the said petition by giving an opportunities to contest.

2. The brief facts of the petition averments is that, the Respondent No.1 and 2 herein being Petitioners/Plaintiffs have filed F.D.P No: 3/2019 against this Petitioner and Respondents No.3 to 10 before the Senior Civil Judge Kundagol, on 18/02/2019, seeking relief of final decree proceedings in terms of judgment and decree in O. S No: 39/2009, Dated: 27/10/2018. The Petitioner herein is Respondent No.1 in the said F.D.P proceedings. As per order dated: 10/06/2020, this court pas passed the Ex-parte in the above said proceedings, by holding that, the service of summons/notice on this Petitioner is sufficient for the reason of "not claimed" of R.P.A.D cover sent to him etc. The Petitioner has not received any suit summons/notice issued by this court as regard to the F.D.P proceedings, at any point of time either through the court officer or through the Postal Department. The Respondent No.1 and 2 have not made any sincere and proper efforts of getting served the suit summons on the Petitioner purposely and deliberately, in order to get ex-parte judgment in the matter somehow. The Respondent No.1 and 2

herein have purposely and deliberately taken steps. in the said F.D.P proceedings against this Petitioner to the wrong and erroneous address of the Petitioner, knowing fully well that, the Petitioner does not reside in the address furnished to this Hon'ble Court and mentioned on the postal cover furnished to this Court in order to issued the process. The Respondent No.1 and 2 have purposely and deliberately mentioned the address of the Petitioner herein on the postal cover and process memo furnish to the court in the said F.D.P proceedings as C/o: GJ Meharwade building, Siddarudha Nagar, Anand Nagar Road, Old Hubballi, Hubballi and without mentioning the House Number of the same. The Petitioner is not at all the resident of the aforesaid address and never he has resided in the above said address. In fact the Petitioner along with his family has been residing in the residential house belonging to RGMeharwade, H No: 27, Anand Nagar Main Road, 1st Cross, Heggeri Colony, Old Hubballi, Hubballi, Dist: Dharwad, since January 2016 and the Petitioner is residing in the 1st Floor of the said building. The Petitioner resides in the above said address regularly. But the Respondent No.1 and 2 have not given the above said true and correct address of the Petitioner. The house of the Petitioner

is not at all come under Siddarudha Nagar, but it comes under Heggeri Colony. But the cover containing the summons/notice sent to the Petitioner bears the wrong and erroneous address on it and the said R.P.A.D cover bears the address of the Petitioner as C/o: GJ Meharwade building, Siddarudha Nagar Anand Nagar Road, Old Hubballi, Hubballi which is not at all address of the Petitioner. In order to furnish the fair, honest and better particulars the Petitioner submits that, Shri GJ Meharwade's building is also there in Shiddarudha Nagar, Hubballi and it is in the close vicinity of the residence of the Petitioner. The postal authority even have not left intimation of the said R.P.A.D cover at the residence of the Petitioner. Therefore, none of the family members of the Petitioner have received any postal intimation. about the said postal cover. Therefore, the postal endorsement mentioned on the cover, as not claimed by this Petitioner is totally baseless and unconnected to this Petitioner. Hence the same is not legal and valid steps taken against the Petitioner. As such the service of the summons/notice on this Petitioner in the said F.D.P proceedings is not just, legal and valid, besides being not sufficient. As the Petitioner did not receive the summons/notice of the said F.D.P

proceedings, the Petitioner could not appear in the aforesaid F.D.P and defend his case. It is mischief played by the Respondent No.1 and 2 in getting ex-parte judgment and decree somehow. The Respondent No.1 and 2 have played such mischief purposely and deliberately to get the ex-parte judgment and decree. In order to try and decide the above said F.D.P proceedings on merits by providing an opportunity of hearing to the Petitioner the judgment and decree stated supra requires to be set-aside. Hence, the Petitioner is constrained to file this petition, in order to resist, contest and get dispose of the top noted F.D.P proceedings purely on merits, rather than mere technicalities. Hence, the petitioner is constrained to file this petition and prays for allowing the petition.

3. In pursuance of notice the respondent No.1 and 2 have appeared through their counsel and filed objection and denied the entire petition averments and contended that, the responsibility of proving these allegations lies entirely upon the petitioner. There was no valid cause for filing a petition of this nature. The reasons stated in the petition are false and artificially created. The petition has been filed

after a long, unexplained and inexcusable delay, and no credible explanation has been given for such delay. Hence, the petition is barred by limitation and is liable to be dismissed. In fact, from the time of filing the original suit O.S. No. 39/2009, the petitioner has been attempting to avoid the progress of the case on one pretext or another, and has been misleading the Hon'ble Court by giving incorrect information. He has also illegally created transfer documents in favour of persons of his choice and got the khata changed, in violation of court orders and without authority. These respondents have properly contested such illegal acts, brought them to the notice of the Hon'ble Court, and pursued the proceedings legally to obtain justice. The petitioner has repeatedly made false claims that he was not residing at the address given by him. Based on the available information obtained through other sources, steps were taken to serve summons and notices to the petitioner at the address where he was residing. Even after the notice was correctly served at the proper address, the petitioner intentionally avoided receiving it and has been causing illegal harassment, loss and trouble to these respondents. In the above case, the final decree order has been passed strictly in accordance with the judgment and

preliminary decree in the original suit and after proper judicial inquiry. Therefore, no injustice, loss or hardship has been caused to the petitioner by the said order. If this petition is dismissed, the petitioner will not suffer any loss or hardship. However, if the petition is allowed, the lawful final decree obtained after many years of litigation will lose its protection, which would cause irreparable loss and hardship to Respondents No.1 and 2 and others. The petitioner is therefore not entitled to any of the reliefs sought. Hence, considering the above grounds prayed to dismiss the petition with costs.

4. The respondent No.10 appeared through his counsel and filed objection by denying the entire petition averments and contended that, the order was passed in FDP on 17/4/2023 and the present petition is filed on 17/6/2023, prior to this the petitioner herein has filed an appeal before the Hon'ble High Court of Karnataka in RFA 100072/2019 in the year 2019 and having become unsuccessful in obtaining the interim order of stay, the present petition is filed only harass these respondents. Further contended that, the petitioner has sold B Schedule property Sy No. 404 to this Respondent vide sale deed dated

7/10/2008 an area measuring 4 Acres out of 4 Acres 27 Guntas of Tadas Village and after sale of and out of the sale consideration the same filed to petitioner herein has purchased the property bearing R.S. No. 50/1, R.S. No. 50/2 and R.S. No. 50/3 totally measuring Acres 10 of Benakanahalli Village in Kundgol Taluka of Dharwad District. The present petition is filed with ill-motive and is filed only to overcome the Decree in FDP. On this ground he prayed dismiss the petition with cost.

5. In support of petition, the petitioner himself examined as PW 1 and got marked 10 documents at Ex.P1 to 10 and closed his side. The respondent No.1 examined himself as RW-1 and got marked 5 documents at Ex.R1 to 5 and closed his side. Posted for argument.

6. Heard arguments canvassed by the learned counsel for the petitioner and respondent.

7. The Points for consideration is:

1. Whether the applicant/petitioner made out sufficient grounds, to set

aside the exparte judgment and decree dated 17.04.2023 passed in FDP No.3/2019 as prayed in the petition?

2. What order?

8. My findings:

Point No.1:- In the Negative

Point No.2:- As per the final order:

REASONS

POINT NO.1 :

9. Admittedly the respondent No.1 and 2 herein are petitioners/plaintiffs have filed FDP No.3/2019 for the relief of final decree proceedings in terms of judgment and decree passed in O.S. No.39/2009 dated 27.10.2018. The say of the petitioner is that he had not received any summons or notice of the said proceedings and therefore he could not appear before the court and contest the case. The summons/notice in the said Final Decree Proceedings were sent to an incorrect and incomplete address, namely C/o: GJ Meharwade Building, Siddarudha Nagar, Anand Nagar Road,

Old Hubballi, Hubballi, without mentioning the house number. According to him, he has never resided at the said address and in fact he has been residing since January 2016 at H.No.27, Anand Nagar Main Road, 1st Cross, Heggeri Colony, Old Hubballi, Hubballi. It is his contention that because of the incorrect address, he never received the summons or postal intimation and therefore the postal endorsement "not claimed" cannot be treated as proper service of summons.

10. On the other hand, Respondents No.1 and 2 have strongly opposed the petition contending that the summons was issued to the address available to them and the RPAD cover returned with the endorsement "not claimed", which amounts to deemed service in the eye of law. They further contend that the petitioner has filed the present petition only to delay the proceedings and harass the respondents. It is also their contention that the petition is barred by limitation and that the final decree has been passed strictly in accordance with the preliminary decree in O.S. No.39/2009.

11. The Respondent No.10 has also filed objections contending that the petitioner has earlier approached the Hon'ble High Court in RFA No.100072/2019 and having failed to obtain an interim stay, the present petition is filed only to overcome the decree passed in the Final Decree Proceedings.

12. In order to prove his case, the petitioner has examined himself as PW-1, filed affidavit in lieu of examination in chief and reiterated the petition averments and produced 10 documents as Ex.P1 to 10. Ex.P1 is the certified copy of order in FDP 3/2019 dated 17.4.2023 wherein the petition filed seeking final decree in terms of judgment and decree in O.S. No.39/2009, dated 27.10.2018 is allowed and drawn final decree as per the commission report submitted by the ADLR of Kundgol and Shiggaon pertaining to the suit property are accepted. Ex.P2 is the house rent agreement wherein it appears that the petitioner was residing in Plot No.27, Siddarudha Nilaya, Siddarudh nagar, Anandnagar road, Old Hubli. Ex.P3 is the insurance policy in respect of Scooter bearing No.KA-63/S-0741 herein mentioned the address

as R.G. Meharwade building, H.No.27, Siddarudha Nagar, Anand Nagar, Old Hubli, Ex.P4 is the bank pass book of petitioner wherein his address shown as Plot.27, Siddarudha Nagar, Anand Nagar, Old Hubli, Ex.P5 is the D.L. of petitioner wherein his address as shown as R.G. Meharwade building, H.No.27, Siddarudh Nagar, Old Hubli. Ex.P.6 is the gas connection letter wherein the petitioner residing at R.G. Meharwade building, H.No.27, Siddarudha Nagar, Old Hubli. E.xP7 is the receipt issued by Deasi and company, wherein petitioner also residing in R.G. Meharwade building, H.No.27, Siddarudha Nagar, Old Hubli. Ex.P8 is the copy of petition in FDP No.3/2019, wherein the petitioner as well as respondents address shown as Tadas, Shiggaon. Ex.P9 is the report issued by the Balief, wherein it is mentioned that: "8.3.2019 ರಂದು ಸದರಿ ನೋಟೀಸಿನಲ್ಲಿ ನಮೂದಾಗಿ ಇರುವ R1, R3 ಮತ್ತು R10 ನೇದವರನ್ನು ಸದರ ವಿಳಾಸದಲ್ಲಿ ವಿಚಾರಿಸಲಾಗಿ ಸಿಗಲಿಲ್ಲ. ಈ ಬಗ್ಗೆ ಅಕ್ಕ ಪಕ್ಕದ ಜನರನ್ನು ಕೇಳಲಾಗಿ R1 ನೇದವರು ಹುಬ್ಬಳ್ಳಿಯಲ್ಲಿ ವಾಸವಿರುತ್ತಾರೆ. R3 ನೇದವರ ಮನೆ ಕೀಲಿ ಹಾಕಿತ್ತು ಹಾಗೂ R10 ನೇದವರು ವಿಶಾಲಘಡ ದೇವರಿಗೆ ಹೋಗಿರುತ್ತಾರೆಂದು ಮಾಹಿತಿ ಹೇಳಿದರು. ಈ ಬಗ್ಗೆ ಆ ಜನರಲ್ಲಿ ಕೇಳಲಾಗಿ ಯಾರೂ ಕೊಡಲಿಲ್ಲ ಕಾರಣ ಸದರಿ R1, R3 and R10 ನೇದವರ ಜವಾಬಿನ ನೋಟೀಸಗಳು ಜಾರಿ ಆಗದೇ ಮೇಃ ನವರ ಕೋರ್ಟಿಗೆ ಪರತ್ ಮಾಡಿರುತ್ತೇನೆ."

Ex.P.9 shown that notice was not served on petitioner in FDP No.3/2019. Ex.P10 RPAD postal cover and mentioned the address as R.G. Meharwade building, Siddarudha Nagar, Anand Nagar, Old Hubli.

13. This witness cross-examined by the counsel for the petitioner wherein he stated that he himself filed this petition against the respondent No.1 and 2. He himself given information to his counsel to prepare the petition. He residing in R.G. Meharwade building in first floor, Hubli. In ground floor there was a Engineering works and said building belongs to R.G. Meharwade, he was not produced any documents. In the rent agreement the signature of mine, owner and his son appears. The owner name is Ravindra Meharvade and son name is Parashuram. He himself purchased the stamp paper in a private typing Center. He do no know his name. Earlier to one week he residing the said house wherein the witnesses name and their signatures as shown in Ex.P.2. He also residing in the house of Badigera for 8 months which was situated nearby Siddarudha Math. He residing since 20 years in Hubli and he also

examine the owner who gave the house for him on rent. In Chief affidavit he has not mentioned as he is residing in Siddhrudha Nagar and he has mentioned Heggeri colony. He also admits that in Ex.P.2 there was no mention of RG Meharwade and not mentioned the Heggeri colony address. He denied that for this purpose of this case, he created Ex.P2 and all the documents produced by him shown as he residing in Siddarudha Nagar. He has not received the notice in O.S. No.39/2020 but he appeared in that case since the said notice served on R.G. Meharwade building. The petition notice in FDP 3/2019 issued to the address as shown in O.S. No.39/2020 under registered post but the same was not taken by him. Witness volunteers that, post man have written false report but he has not taken action against him. In his house, himself, his wire and 4 children were residing and they are depending on his income. His children have filed O.S. No.107/2023 before the Civil Judge and JMFC, Shiggaon but they have not stated about him. The said notice was also not served on him and he has not appeared in that case and not filed

vakalat. He do not know the advocate name Bendigeri. He has not executed any sale deed. He do not remember whether the address mentioned in sale deed as Tadas, Shiggaon taluk. He admits that before Hon'ble High Court of Karnataka, Dharwad bench, he filed RFA No.100072/2019 in that case he mentioned his address shown in Ex.P2. He denied that he mentioned his address as Tadas Shiggaon Talu in RFA. He denied that he is residing permanently in the address shown in FDP petition and he has not received any notice issued in the RTSA No.66/2025 before Asst. Commissioner Court, Dharwad and he appeared through R.G. Ullagaddi, Advocate, he has not identified his signature as shown in the Vakalat and he admits the Vakalat and signature and same has been marked as Ex.R.1. Village Accountant through phone call intimated about the notice as he appeared in that proceedings. He admits Priynaka is his daughter. She filed a suit in O.S. No.107/20023 in that case he was respondent No.1, but he has not received summons and not appeared through advocate. He denied that he appeared M.H. Bendigeri,

advocate in that case and said suit summons issued to the address shown in FDP No.3/2019. He denied that intentionally he has not received notice and hence, notice returned in FDP 3/2019. He do not know whether the property was measured in FDP No.3/2019. Before measurement, V.A. issued notice and the said FDP No.3/2019 till today is pending. He do not know what order has been passed in FDP 3/2009. Without his absence the surveyor measure the property as per the direction made in FDP. No.3/2019 and he has no objection to give share to his brothers and sisters and no illegality has been committed in FDP 3/2019. He denied that he residing in the address as shown in FDP No.3/2019 by creating the documents he filed this petition and deposing false evidence.

14. In order to disprove the petition averments, the respondent No.1 examined as R.W.1 and filed affidavit in lieu of examination in chief and reiterated the objection averments in toto and produced 5 documents. Vakalath filed in RTSCR No.66/25 marked at Ex.R.1. The plaint in O.S. No.107/2023, Vakalath of petitioner in O.S. No.107/2023 marked at Ex.R.2 and 3. The

objection filed in Tahasildar office, Kundgol marked as Ex.R.4 and the written argument filed in RTSCR No.114/2022-23 marked as Ex.R.5. This witness cross-examined by the counsel for the petitioner wherein he stated that he is permanent resident of Dharwad, Srinagar. In Aadhar card and I.D. card appears the Srinagar address. He is residing since 25 years at Srinagar, and he has not mentioned the above address in plaint, W.S., chief affidavit of this case and also mentioned in FDP 3/2019 and Misc. No.5/2020. The same was shown R.W.1 he admits that he has not mentioned the address in plaint and objection in FDP No.3/2019 and the said address shown in the chief affidavit is the ancestral house address. He admits that the petitioner is his brother, he shown his address in FDP as Tadas village and also issued court summon to Tadas address for the first time. In FDP No.3/2019 the petitioner shows that the petitioner is residing Tadas, Shiggaon taluk and the said document is marked as Ex.P.8 and the said notice issued by him got to Tadas address and said RPAD cover marked as Ex.P9. The petitioner residing since 10-12 years in Hubli and

he do not know which address he is residing and he has not seen any authorised document to know that he is residing in the said address. The summons issued to the address of Tadas. Witness voluntaries that himself send the postman by giving address of petitioner as R.G. Meharwade. He do not know in which building the petitioner is residing. He issued notice to Hnumantappa Badigera, near Siddarudha Math and R.G. Meharwad building in FDP proceedings and court summons was not issued in FDP proceedings. He has given information to his adovate to mention the address on the RPAD cover. The RPAD was shows the address of G.J. Meharwade building situated near Siddharudha Nagar. He denied that intentionally he issued notice to the petitioner to the Tadas address by knowing the G.J. Meharwad address. He admits that the documents produced by him is not shown as GJ Meharwade building and he has not issued notice to the petitioner to the address of GJ Meharwad or RG Meharwade building, Hubli and he has no personal information about Hubli. Hubli is a big City having so many colonies and he do not know Heggeri colony comes in which place. He

denied other suggestions posed to him.

15. The evidence of PW.1 itself shows that, petitioner is aware the judgment and decree passed in O.S.No.39/2009. On perusal of the same, it appears that the said suit was partly decreed and declared that, the plaintiff's are entitled for 3/32 shares in land Sy.No 51/1, 50/2 and 50/3 total 10 acres by allotting 1/3rd share each and also declared that the petitioner No.1 and 2 and defendant No.1 are entitled 1/3rd share in Sy.No. 404 measuring 4 acre 27 guntas except 4 acres land, which was sold in favour of respondent No.10. Therefore the petitioners are entitled for 1/3rd share in remaining 27 guntas. Further, the order sheet in FDPNo. 3/2019 dated 21-09-2023 it found that the petitioner herein was appeared through his counsel in pursuance notice issued by this court, despite of opportunity the petitioner was not filed objection to final decree proceedings as this Court was passed final decree by accepting the commissioner report. This itself shows that the petitioner had opportunity to proceed with case in FDP proceedings, but he kept mum and finally filed this petition. Hence,

the petitioner is not entitled for the relief sought in the petition.

16. The provision under Order 9 Rule 13 of C.P.C. 1908, it reads thus "Setting aside decrees exparte against defendant" In any case in which a decree is passed exparte against a defendant, he may apply to court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served on that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit, provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

17. Provided further that no Court shall get aside a decree passed exparte merely on the ground that there has been an irregularity in the

service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation:- Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of any ground other than the ground that appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that *ex parte* decree.

18. As per the aforesaid provision of law, there must be a bona-fide reasons or cause for non appearance of the defendant/ petitioner to represent the case. It is the contention of the counsel for the respondent No.1 is that, before filing of the petition itself this respondent caused to notice to petitioner, but he was not appeared and not filed objection, hence this court passed final decree based on the commissioner report and after that notice issued by the court commissioner in Final Decree proceedings and after receipt of all notices, summons, the petitioner herein kept silence for

some time and after drawing of final decree, he filed this present petition to drag on the proceedings and there is no bonafide reasons or cause was assigned by the petitioner to restore the petition.

19. In the present case, this Court has placed petitioner *exparte* after due service of summons in FDP No. 3/2019. Later this court issued notice to respondent No.1 i.e., petitioner herein the same was served on the address shown in RPAD cover he appeared through his counsel filed vakalath. The documents produced by the respondent No.1 itself shows that, the petitioner herein appeared through his counsel after receipt of notice issued by this court, but not contested the petition and hence this court accepted the commissioner report and drawn final decree in terms of preliminary decree passed in O.S.No No.39/2009. The order sheet dated 30.8.2023 reveals that, this court at the time of passing order on 26.5.2023 has observed that, the notice is to be given to other side as required under order 9 rule 14 of CPC, the learned counsel prays to issue notice to respondent only as is the only contesting

opposite party. Hence issue notice to the respondent through RPAD and the same was served on petitioner, he appeared through counsel on 21.9.2023, but not filed objection nor lead evidence for his non-appearance in the earlier stage. Thereafter this court drawn final decree in respect of land bearing Sy.50/1, 50/2 and 50/3 of Benakanahalli village with liberty to seek final decree in respect of sy. No.404 measuring 27 gutnas in separate proceedings. The documents produced by the respondent at Ex.R1 shows that the petitioner appeared through his counsel before the Asst. Commissioner, Dharwad in RTS Appeal No.66/2025 wherein his address mentioned as Tadas, Shiggaon Tq. Ex.R.2 is the plaint in O.S. No.107/2023 filed before the Civil Judge Court, Shiggaon, where the address of the petitioner shown as Tadas, Shiggaon taluk. Ex.R.3 is the Vakalat filed by the petitioner in O.S. No.107/2023. Ex.R.4 application given by the respondent No.1 herein before Tahasildar not to change the khata. Ex.R.5 is the objections filed by the 1st respondent in RTSCR No.114/2022-23. These documents itself shows that, the

petitioner is residing in Tadas as well as R.G. Meharwade building, Hubli. In FDP proceedings notice was issued to both address, but the notice issued to Tadas address was returned and R.G. Mheharwade building, Hubli is served and the final decree also passed in terms of preliminary decree passed in O.S. No.39/2009. The preliminary decree passed by this court has not been challenged by the parties it has been reached finality. On perusal of preliminary decree it appears that, Petitioner No.1 and respondent No.1 are entitled for 9/32 each share in 'A' house property. The defendant No.2 to 6 are entitled 1/32 share in 'A' schedule property, the plaintiff No.1 and 2 and defendant No.1 are entitled 1/3rd share each in 'C' schedule property. And in respect of B schedule property the claim of the petitioner is dismissed and held that, the sale deed in respect of B schedule property is binding on the plaintiff. In view of the preliminary decree, this court has drawn final decree in the presence of petitioner herein and he had knowledge about the same and he has not challenged the final decree proceedings before appellate Court, with an intention to drag

on the proceedings this petition is filed by the petitioner. If the petition is allowed and restored the FDP proceedings and a petitioner is permitted to lead new proceedings the **fruits of a decree will be significantly delayed**. It is settled law that restoration implies that a closed or dismissed petition is reopened, often reversing the progress made toward execution. When a suit is restored under Order IX Rule 9 of the CPC, the parties are placed back in the position they were in before the dismissal, effectively initiating a new round of litigation. If the court permits the restoration and allows new evidence or proceedings, it delays the realization of the decree holder's benefits. Hon'ble Supreme Court has directed High Courts to ensure pending execution petitions are decided within six months to curb such delays.

20. It is is relevant quote the decision of the **Hon'ble Apex Court reported in (2009)2 SCC 205 in the case of Mahesh Yadav V/s Rajeshwar Singh**, wherein it is held that, When the application of for set side ex-parte decree is made by the defendant the court should consider whether the defendant was prevented by

sufficient cause from appearing before the court when the suit was called out for hearing. If the court finds that there was sufficient cause for non-appearance, it is bound to set-aside the decree. Conversely if sufficient cause is not shown, ex-parte decree can not be set aside. This right and this duty is a sine qua non of judicial procedure. An order setting aside ex-parte decree is judicial and it must be supported by reasons. On perusal of the above the rule requires an application by the defendant to set aside an ex-parte decree passed against her if there exist sufficient grounds for it. If the defendant satisfies the court that (i) the summons was not duly served; or (ii) he was prevented by any sufficient cause from appearing when the suit was called out for hearing, the court will set aside the decree passed against him and appoint a day for proceeding with the suit. (iv) Summons not duly served: As provided in Rule 6, the suit may proceed ex-parte against the defendant only when it is proved by the plaintiff to the satisfaction of the court that the defendant did not appear even though the summons was duly

served. In that case, an ex-parte decree may be passed against her. Therefore, if the defendant satisfies the court that the summons was not duly served upon his, the court must set aside the ex-parte decree passed against him, On perusal of entire evidence adduced by the petitioner and respondent No.1 and documents produced, it clearly reveals that, the date on which the notice issued to the petitioner, the petitioner was received and kept mum and not appeared before the court and the petitioner not satisfies that there is a bona-fide reason for him non appearance before the court on the date of evidence. The petitioner has submitted that if an opportunity is granted to substantiate his evidence, he will be in a position to adduce the evidence in support of his defence as well as cross examine the petitioner. On perusal of entire cross examination of PW.1 he categorically admits that he know the final decree proceedings appeared through his counsel, but not filed objection to commissioner report within the stipulated period of limitation and no sufficient cause is shown by the petitioner, if this application is allowed, the

respondents will be put to great hardship and inconvenience, which cannot be compensated by any means. Hence, I answer **point No.1 in the Negative.**

Point No.2:

21. In view of my above discussions and findings on Points No.1, I proceed to pass the following:

ORDER

The petition filed by the petitioner
U/o 9 Rule 13 R/w Sec.151 of CPC is
hereby dismissed with cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected, signed and then pronounced by me in open court on this 26th day of March 2026).

(Abdul Khadar)
Senior Civil Judge and JMFC,
Kundgol.

ANNEXURE

List of witnesses examined on behalf of petitioner:

PW.1 : Shivalingappa Bendigeri

List of documents exhibited on behalf of petitioner:

- Ex.P1: C/c of FDP No.3/19
Ex.P2: House rent assessment
Ex.P3: Vehicle Insurance policy
Ex.P4: Pass book
Ex.P5: D.L.
Ex.P6: LPG Gas company letter
Ex.P7: Gas Cylinder receipts
Ex.P8: C/c of Application of FDP 3/19
Ex.P9: Summons in FDP No.3/19
Ex.P10: RPAD cover.

List of witnesses examined on behalf of Respondent:

R.W-1 : Shiddappa Bendigeri.

List of documents exhibited on behalf of Respondent:

- Ex.R1: Vakalat
Ex.R2: C/c of plaint in O.S. No.107/23
Ex.R3: Vakalat
Ex.R4: C/c of Objection to RTSCR No.114/22-23
Ex.R5: C/c of W.S. in RTSCR No.114/22-23.

**(Abdul Khadar.)
Senior Civil Judge and JMFC,
Kundgol.**