

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.5893 OF 2008
(Arising out of S.L.P. (C) No.10563 of 2006)

Ramaiah

...Appellant(s)

Versus

Tmt. Sarasu and Ors.

...Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

Original Suit No.76 of 2000 was decreed by the Trial Court ex-parte on 7th March, 2001. Defendant No.5, who was a purchaser, filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, (hereinafter referred to as, 'the C.P.C.') for setting aside the ex-parte decree, which was dismissed. Against the said order, when the matter was taken to the High Court, the said order has been confirmed. Hence, this appeal by special leave.

Undisputedly, in the plaint, name and address of the appellant, who was Defendant No.5, was wrongly mentioned, as a result of which summons could not be served upon him. In view of these facts, we are of the view that the Trial Court was not justified in rejecting the application under Order IX Rule 13 of the C.P.C. and the High Court has committed an error in confirming the same.

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Accordingly, the appeal is allowed, order passed by the Trial Court refusing to set aside ex-parte decree and impugned order passed by the High Court confirming the same are set aside, application under Order 9 Rule 13 of the C.P.C. is allowed and the ex-parte decree passed in the suit is set aside.

[B.N. AGRAWAL]

.....J.

[G.S. SINGHVI]

.....J.

New Delhi,
September 29, 2008.