

**Durga Prasad Vs. Het Ram and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/484006](http://sooperkanoon.com/484006)

**Court :** Allahabad

**Decided On :** Oct-24-1922

**Reported in :** AIR1923All79; 77Ind.Cas.91

**Judge :** Piggott and; Walsh, JJ.

**Appellant :** Durga Prasad

**Respondent :** Het Ram and ors.

**Judgement :**

1. This is an appeal against an order refusing to set aside an ex parte decree. We have had to hear the appeal ex parte, the respondents having entered no appearance. So far as we can ascertain from the record before us, the appellant has a very strong case. The suit was one for partition and the parties had compromised it, to the extent, that they had agreed upon the form of the preliminary decree to be passed. What was left for the Court to do was to carry out in detail the division of the property concerned in accordance with the terms of the preliminary decree. There was property situated in two different districts to be dealt with, and certain arrangements were made for the partition of the property in the Moradabad District to be carried out on commission. After sundry adjournment, a definite date, namely, 20th December 1920, was fixed for the return of the Commissioner's report and, no doubt by implication, for the consideration of that report by the Court in the presence of the parties. So far as the record shows, neither Durga Prasad nor his Pleader received any notice of the fact that this date

had been fixed. Durga Prasad was absent on that date and, in his absence, a final decree for partition was drawn up against which Durga Prasad contends that he has valid objections to offer. When he applied to have the ex parte decree set aside and his objections judicially considered, his application was rejected. The only reason given is that Durga Prasad, as a party interested in the suit, ought to have kept himself informed of all dates 'which the Court might fix for beiring. It is true that in the order under appeal the learned Subordinate Judge has also remarked that Durga Prasad produced no evidence to corroborate his own sworn statement that he did not know that the partition suit was down for hearing before the Court on the 20th of December 1920. It is not easy to see what oral testimony Durga Prasad could have produced in support of this negative assertion; but what makes the appellant's case harder is that the Court below has actually believed his statement. The learned Subordinate Judge records his finding that Durga Prasad did not in fact know that, the 20th of December 1920 had been fixed for the hearing of the suit, though he still maintains that for this Durga Prasad was to blame. We are not prepared to endorse this view. When a Court finds it necessary to adjourn a pending suit, it is part of the duty of the Court to see that the date fixed for the adjourned hearing is communicated to the parties concerned, or to their legal representatives, or, at any rate, to such of them as are present or represented in Court when the adjournment takes place. In the present instance there have been a number of orders of adjournment and the record shows that the successive dates fixed were communicated to the Pleaders representing parties other than Durga Prasad. Why or how the Court failed to communicate these orders to Durga Prasad or his pleader, the record does not explain. Under the circumstances we think Durga Prasad has shown sufficient cause for his failure to appear the date on which the Court finally disposed of the suit. We think he was entitled to have the ex pane decree set aside and any objection which he had to offer to the partition proposed by the Commissioner appointed by the Court taken into consideration and judicially determined. We allow this application. We set aside the order under appeal and in lieu thereof we pass an order setting aside the final decree for partition passed by the Court below. The record will be returned to that Court in order that the partition suit may be re-admitted on to the pending file and taken up at the precise stage which it had reached when the case was called

upon on the 26th of December 1920. A further date should, be fixed of which proper information is given to all the parties concerned, and on that date, the parties should be heard in respect of any objection which they may take to the manner in which it is proposed to carry out the preliminary decree into final effect. As this appeal has been heard ex parte, we leave the costs of this appeal, including fees on the higher scale, to be. dealt with by the Court below when it passes its final decree.

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