

C.R. No. 8671 of 2016

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 8671 of 2016

DATE OF DECISION:19.01.2017

Jaswinder Singh

.....Petitioner

Versus

Jayant Kumar and another

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sudhir Paruthi, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 9.11.2016 (Annexur P-5) passed by learned Civil Judge (Junior Division), Hoshiarpur, whereby, an application filed by the petitioner under Section 9 CPC has been dismissed.

Briefly, the facts of the case are that the respondents filed a suit for declaration to the effect that they being tenant are in possession of the land in dispute and also for permanent injunction restraining the petitioner-defendant from interfering in their peaceful possession. The suit was contested by the petitioner on the ground that respondent No.2 was not the owner of the property as it was never purchased by him. Even the execution of Pattanama was denied by the petitioner. It was also the stand in the reply that respondent No.1 filed an application for correction in Khasra

Girdawari, which was allowed. The petitioner preferred an appeal against the said order, which was decided on 17.5.2000. The Collector, Hoshiapur set aside the order of correction in Khasra Girdawari on the ground that the petitioner was not given any opportunity to defend his case and the case was remanded to Tehsildar-cum-Assistant Collector, IInd Grade, Tanda with a direction to decide the matter afresh after granting opportunity to the petitioner to plead his case.

During pendency of the suit, the petitioner moved an application under Section 9 CPC for dismissal of the suit. The reply was filed by the respondents. Said application was dismissed vide order dated 9.11.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that order of remand dated 17.5.2000 passed by the Collector, Hoshiapur was never challenged by the respondents and as such the same has attained finality. After passing of order dated 17.5.2000, the name of the petitioner was incorporated in the revenue records. Learned counsel further contends that thereafter another application for correction of Khasra Girdawari was filed before Assistant Collector, IInd Grade, Tanda, which was also dismissed on the ground that earlier application was still pending after remand by the Collector. Learned counsel also contends that just to overcome the issue of correction in Khasra Girdawari, the present suit has been filed by the respondents for declaration that they being tenant are in possession of the land in dispute, whereas, the present suit is barred by principle of resjudicata and the same is liable to be dismissed. Learned counsel also submits that as per provisions of Section 158 of Punjab Land Revenue Act,

1887, there is a bar to approach the civil Court.

Heard the arguments advanced by learned counsel for the parties and have also perused the impugned order and other documents available on the file.

Reply of the application was filed by the respondents, wherein, it has been mentioned that the petitioner filed an application under Section 10 and 11 CPC, which has already been dismissed. Thereafter review application was also dismissed. Said order passed in the application and review were challenged by way of filing Civil Revision No. 8542 of 2016 and the same has been dismissed by this Court on 18.1.2017. The factum of possession is to be decided by the Civil Court and provisions of Section 9 CPC are not applicable. Even the objection with regard to Section 9 CPC was not raised in the written statement filed by the petitioner. The purpose of the application appears to delay the proceedings of the civil suit. The suit is at the initial stage and evidence of both the parties is yet to start. Moreover, the issues have been framed by the civil Court with regard to maintainability, estoppel and also that of jurisdiction, which can be decided on the basis of evidence to be led by both the parties.

By considering the submissions made by learned counsel for the petitioner and the facts of the case as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is hereby dismissed.

January 19, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes