

211

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 7282 of 2014 (O&M)
Date of Decision: 30.04.2019

M/s Vinman Constructions Pvt. Ltd.

-Petitioner

Vs

Devender and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ranjit Saini, Advocate, and
Mr. Ishaan Liberhan, Advocate,
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has challenged the impugned orders dated 01.03.2013 passed by Civil Judge (Junior Division), Gurgaon and order dated 14.10.2014 passed by Additional District Judge, Gurgaon whereby the application under Order 39 Rules 1 and 2 CPC was allowed concurrently by both the Courts below.

2. At the time of issuance of notice of motion on 29.10.2014, following order was passed:-

“Facts narrate before me are that one Khubi Ram was mortgagee of the suit property measuring 18 kanal 16 marla for an amount of ₹300/-. He died in the year 1953 leaving behind three sons, namely Ram Kishan, Lakhmi Chand and Bhagwan Dass. The mortgagors namely

Randhir and Jai Narain sold the property in dispute to Ram Karan for a sum of ₹7,94,000/-. Thereafter, Ram Karan filed a suit for possession by way of redemption in the year 1988 impleading Khubi Ram as a party but since he was proceeded against exparte, therefore, decree dated 15.4.2002 was passed against him. Learned counsel for the petitioner has submitted that he is not sure as to whether the amount of redemption money was deposited by the plaintiff or not.

Be that as it may, mutation was sanctioned in favour of the plaintiff in that case. Thereafter, Lakhmi Narain and Bhagwan Dass sons of Khubi Ram filed an application under Order 9 Rule 13 of the CPC on 28.7.2003 for setting aside the decree dated 15.4.2002, but the said application was withdrawn. Thereafter, the petitioner purchased the suit property in the year 2011 for a sum of ₹10,24,60,000/-. The respondent preferred a suit for mandatory and permanent injunction alleging that they are mortgagee in possession of 1/3rd share of the property in dispute which has devolved upon them after the death of their father. In the said suit, they have also filed an application for temporary injunction which has been allowed by both the Courts below.

Leaned counsel for the petitioner has argued that the petitioner is a developer, who has to develop 14.4. acres of land in which he

is raising 400 tenements which includes the land in dispute. His grievance is that the trial Court has ordered that the petitioner would not raise any construction on the share of the plaintiffs which has otherwise not been determined as the land has not been partitioned so far and the entire construction has come to a stand still. He has submitted that though he is disputing the right of the plaintiffs over the land, yet the petitioner would not raise any construction on a piece of land which would fall to the share of the plaintiffs, if the order of the Court below is modified.

Notice of motion to respondent Nos. 1 and 2 only for 13.11.2014. Dasti only.”

3. Thereafter, the case was adjourned on numerous occasions.
4. On 08.08.2016, a report was sought from the trial Court in respect of stage of proceedings. Vide order dated 18.10.2016, the Co-ordinate Bench had directed the trial Court to proceed with the suit. A copy of the order was circulated to the Court concerned.
5. Again on 09.01.2017, a report was sought from the trial Court regarding stage of the proceedings before it. Thereafter, the case was further adjourned on number of occasions including the date i.e. 22.11.2018 when last opportunity was granted to the petitioner to address arguments.

6. On 27.03.2019, this Court took notice of report dated 03.03.2017 filed by Additional Civil Judge (Senior Division), Gurgaon and further directed the petitioner to apprise this Court about the exact status of the suit as on date.

7. Learned counsel for the petitioner has informed the Court that 29.05.2019 is the date fixed for final arguments before the trial Court.

8. In view of aforesaid attending circumstances of the case particularly when the interim order passed under Order 39 Rules 1 and 2 CPC remained in operation throughout the currency of the suit, I deem it appropriate to maintain the same, however, direction is issued to the trial Court to decide the suit proceedings either on the date fixed i.e. 29.05.2019 or within reasonable time thereafter.

9. Disposed of.

30.04.2019

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No