

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117)

CR no.229 of 2020

Date of Decision: 31.01.2020

Banwari Lal

...Petitioner

Versus

Balraj Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Anita Kumari, Advocate, for
Mr. Rose Gupta, Advocate, for the petitioner.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner seeks a direction to the trial court (learned Civil Judge (Jr. Divn.), Hisar), to decide the application filed by the petitioner under Order 39 Rules 1 and 2 of the CPC, the petitioner being the plaintiff before that court, in a suit by which he is seeking a decree declaring him to be the owner in possession of the suit land, with a further prayer made for issuance of a decree of permanent injunction/prohibitory injunction, restraining the defendants in the suit from interfering in the physical and peaceful possession of the plaintiff and causing any interference or disturbance in such possession.

On January 14, 2020, the following order had been passed by this court:-

“Upon it being seen that though, undoubtedly, the application of the petitioner under Order 39 Rules 1 and 2 of the CPC obviously seems to have been accompanying the suit itself, with notice in that application as also in the suit issued by the learned trial Court on 11.09.2019, thereafter, upon the defendants putting in an appearance before that Court, they had filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint, to which no reply was filed by the

petitioner, despite the trial Court having granted slightly over one month to file such reply (on 02.11.2019), and then again on 04.12.2019, with the next date of hearing then being 19.12.2019.

On that date too, no such reply to the application was filed, with the matter adjourned before that Court till today.

In such circumstances, I do not see how the petitioner can press that his application under Order 39 Rules 1 and 2 be decided, even with him not having filed a reply to the application seeking rejection of the plaint itself.

Of course, if the petitioner had filed that reply at the first instance possible and thereafter that application was not being decided, and the application under Order 39 Rules 1 and 2 filed by the petitioner had also not been decided, that could have been a different matter.

This Court having observed as above, learned counsel seeks time to determine the stage of proceedings after today, before the trial Court.

Adjourned to 21.01.2020.”

Thereafter, on January 21, 2020, learned counsel for the petitioner had informed this court that in fact a reply to the application filed by the defendants seeking rejection of the plaint under Order 7 Rule 11 of the CPC, had been filed by the petitioner one day earlier.

Thereafter the matter had been adjourned till today on the request of the learned counsel for the petitioner.

Today, she submits that the petitioner being the owner in possession of the suit property, is therefore seeking that during the pendency of the suit, the defendants be restrained from interfering in such possession.

Having considered the matter, this court already having observed in its order dated 14.01.2020 that the petitioner was not even filing a reply to the application filed under Order 7 Rule 11 of the CPC on the maintainability of the suit, he could not fault the trial court for not deciding

the application filed under Order 39 Rules 1 and 2 of the CPC.

Now of course with the reply to that application filed, it is stated that the next date of hearing in that application before the trial court is 12.03.2020.

That being so, without making any comment whatsoever on the merit of the case or even on the maintainability of the suit itself, with obviously the trial court to go into that issue also wholly on its own merit, this petition is disposed of with a direction that if the suit of the plaintiff is found to be maintainable by the trial court on the next date of hearing, i.e. March 12, 2020, the application filed under Order 39 Rules 1 and 2 of the CPC shall be thereafter decided very expeditiously.

It is further directed that in the meanwhile, alienation of the suit property shall remain stayed, till the decision by the trial court on the aforesaid application filed under Order 7, Rule 11, of the CPC.

31.01.2020
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No