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

CR-3092-2023 (O&M)

Date of Decision: 18.05.2023

Karamdeen @ Karma

....Petitioner

Versus

Deen Mohammed @ Deena and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Akshay Kumar Jindal, Advocate
for the petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 31.03.2023 (Annexure P-25) passed by Ld. Civil Judge (Jr. Divn.), Kalka, whereby the application filed by petitioner/plaintiff for recalling order dated 20.04.2021 and 25.05.2022 and for permitting petitioner/plaintiff to lead further evidence, was dismissed.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Petitioner/plaintiff filed a suit for declaration and permanent injunction to the effect that plaintiff along with respondent/defendants No.1

& 2 are the joint owners in possession, to the extent of 1/3rd share each i.e. 4 Bighas-15 Biswas- 7 Biswansis each, out of the total land measuring 14 Bighas-6 Biswas, recorded under the ownership and possession of their father Sh. Hadish Mohammed s/o Sh. Hukam Deen, comprised in land bearing Khewat No.25//22, Khatauni No.26, Khasra No.97/1 (11-9), 97/3 (1-12), 97/5 (2-16), Kitte-3 measuring 15 Bighas 17 Biswas; Khewat No.26//23, Khatauni No.27, Khasra No.97/4, measuring 0 Bigha-7 Biswas, situated in Village Islam Nagar, Hadbast No.192, Tehsil Kalka, District Panchkula as per jamabandi for the year 2014-15 read with Mutation No.724, 1506, 2246, 2265 and 2810 of village Islam Nagar, Tehsil Kalka, District Panchkula.

2.2. Respondent/defendants No.1 and 2 filed written statement (Annexure P-2) and stated that the suit filed by petitioner/plaintiff is not maintainable nor petitioner/plaintiff has got any *locus-standi* to file the present suit.

2.3. Respondent/defendants No.10 & 11 filed written statement (Annexure P-3) and submitted that plaintiff/petitioner has not served any statutory legal notice under section 80 CPC before filing the present suit and that no cause of action has arisen in favour of petitioner/plaintiff and against defendants, as alleged.

2.4. After framing issues, the case was fixed for evidence of petitioner/plaintiff for 15.04.2020. Since then, a countrywide Lock-down was imposed on account of threat and the outbreak of Covid-19 virus. The case was adjourned from 15.04.2020 to 01.07.2020 and then to 01.09.2020,

05.11.2020, 13.01.2021 and ultimately to 24.02.2021. On 24.02.2021, the case was further adjourned to 23.03.2021 and then to 28.04.2021 subject to last opportunity for plaintiff's evidence. In other words, last opportunity was fixed for evidence of petitioner/plaintiff on second effective opportunity. On 28.04.2021, the regular working of court was closed due to pandemic of corona virus and the case was further adjourned to 01.09.2021 and then the case was adjourned to 07.10.2021 and ultimately to 15.12.2021.

2.5. On 15.12.2021, the petitioner/plaintiff was present as his own witness and he placed on record his affidavit in evidence and on request made by opposite side, the case was adjourned to 03.02.2022 for evidence of plaintiff. But on 03.02.2022, the regular working of the court was closed due to pandemic of corona virus and the case was further adjourned to 23.03.2022. On 23.03.2022, no witness of plaintiff was present and the case was further adjourned to 20.04.2022 for evidence of plaintiff.

2.6. On 20.04.2022, plaintiff got recorded his examination-in-chief as PW1 and on the request of opposite counsel, the case was adjourned to 25.05.2022 for cross examination of PW1 Karamdeen. However, it was further mentioned in order dated 20.04.2022 (Annexure P-17) that no fresh affidavit of witness in plaintiff evidence will be taken on file and on 25.05.2022, PW1 i.e., petitioner/plaintiff was present but his statement could not be recorded on that day and the case was further adjourned to 22.09.2022 for cross examination of PW1 with further observation in order dated 25.05.2022 (Annexure P-18) that no fresh affidavit of witness in plaintiff evidence will be taken on file.

2.7. On 22.09.2022, PW-1 Karamdeen @ Karma was examined and application (Annexure P-23) under Section 151 CPC was filed by Plaintiff for recalling orders dated 20.04.2021 and 25.05.2022 and for permitting petitioner/plaintiff to lead further evidence and case fixed for 27.10.2022 but opposite party sought adjournment to file reply to the said application and a reply to the said application was filed by the respondent/defendant No.1 on 19.01.2023 and case was fixed for 02.03.2023 for arguments on the said application. Arguments were advanced by both the parties on 02.03.2023 and case was fixed for 31.03.2023 for orders and for further proceedings.

2.8. Vide impugned order dated 31.03.2023 (Annexure P-25), Ld. Civil Judge (Jr. Division) dismissed the application filed by petitioner/plaintiff.

3. Learned counsel for petitioner would argue that aforementioned chronology of events clearly shows that most of the opportunities granted to petitioner/plaintiff for leading his evidence were not the effective opportunities as the Ld. Courts were not working on those dates due to some restrictions imposed because of pandemic of corona virus. He would further argue that no prejudice shall be caused to respondent/defendants in case petitioner/plaintiff is permitted to lead further evidence in the case.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondents/defendants is dispensed with, at this stage.

5. I have heard learned counsel for petitioner and have perused the case file carefully.

6. Facts stated in the preceding paragraphs reflect that the delay in concluding the plaintiff's evidence is not entirely attributable to plaintiff alone as the chronology of events itself is self-speaking. As is borne out from zimni orders contained at Annexures P-4 to P-17, considerable time was consumed in non-effective hearings when the matter was being taken up during intervening pandemic period, since some restrictions were imposed on Court working and the evidence was not being recorded. Therefore, to attribute the delay in causing plaintiff's evidence entirely to the plaintiff does not seem just and proper in the present case. Furthermore, I may also hasten to add here that Ld. Trial Court got rather over-swayed by the fact that further opportunity to plaintiff to adduce his evidence would delay the trial. Delay, if any, is rather equally, if not more, detrimental to plaintiff himself, given the nature of suit filed by him.

7. Be that as it may, no doubt, merely because the delay is detrimental to plaintiff himself, it should not be an excuse for plaintiff to inordinately delay the proceedings given the high pendency of cases before Ld. Court below.

8. In the peculiar circumstances of the case, as borne out from the proceedings of Ld. Trial Court, the instant petition is allowed with the condition that plaintiff shall not be given more than three effective opportunities to adduce his evidence within a span of three months commencing from 1st July, 2023 onwards (given that there will be no civil work in June-2023 due to summer vacation), subject of course to the discretion of Ld. Trial Court to give further opportunities for the said

purpose depending upon exigencies of work, but within the aforesaid period of three months only.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 18, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No