

C. R. No. 640 of 2023 (O&M) and C. R. No.3137 of 2023 -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.379(2)

Case No. : C. R. No. 640 of 2023 (O&M)

Reserved on : 04.04.2024

Pronounced on **07.05.2024**

Arun Fotedar Petitioner
vs.
Sanjay Fotedar Respondent

Case No. : C. R. No.3137 of 2023

Arun Fotedar Petitioner
vs.
Sanjay Fotedar Respondent

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. V. K. Shali, Senior Advocate
with Mr. Kuljit Singh, Advocate
for the petitioner (*through Video Conferencing*).

Mr. Sandeep Vermani, Advocate
with Mr. Aditya Vermani, Advocate
for the respondent.

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GURBIR SINGH, J. :

1. By this common judgment, both the aforesaid revision petitions i.e. **C. R. No. 640 of 2023** and **C. R. No. 3137 of 2023** are being disposed of.

2. Both the aforesaid revision petitions have arisen against the orders of learned trial Court passed in **Civil Suit No.1946 of 2021** titled **Arun Fotedar vs. Sanjay Fotedar** pending before learned Civil Judge (Junior Division), Gurgaon. Briefly, plaintiff/petitioner (hereinafter referred to as

“plaintiff”) filed a suit for partition against defendant/respondent (hereinafter referred to as the “defendant”), who is his real brother, *inter-alia* stating therein that the plaintiff and defendant are co-owners, having 50% share each in the built-up house situated on two plots measuring 832 sq. yds. i.e. Plot No.C-2/72 and Plot No.C-2/73, Lord Krishna Enclave, Sushant Lok, Phase-I, Gurugram (for brevity – the suit property). The suit property consists of basement, ground floor, first floor and barsati.

3. The suit property was transferred to the defendant vide registered deeds dated 19.12.2001 (Annexure-E) and 08.05.2002 (Annexure-F). Earlier, there was a family understanding to the effect that one plot would be transferred in the name of the plaintiff. However, on completion of the built-up structure, the ‘Completion Certificate’ for the house could not be granted because of the reason that the two plots, on which it was built, had two different owners. So, both the aforesaid plots were transferred in the name of the defendant.

4. Later, vide transfer deed dated 22.07.2014 (Annexure-G), the defendant transferred half share of the suit property in favour of plaintiff.

5. The basement portion of the suit property is being used to keep household articles, ground floor is occupied by the defendant, a part of the first floor is being occupied by Jitender Fotedar as licensee and plaintiff is residing on barsati. Since plaintiff was facing problem due to paucity of space for his growing family, he requested Jitender Fotedar to vacate the suit property but he, in collusion with the defendant, is trying to defeat plaintiff’s right in the suit property. The plaintiff has already filed a separate suit for mandatory injunction and recovery of mesne profits against Jitender Fotedar,

wherein the present defendant has been impleaded as proforma defendant.

6. Coming to the lis in hand, it is apt to mention here that **C. R. No. 640 of 2023** has been filed against the order dated 22.12.2022 passed in **Civil Suit No.1946/2021** by learned Civil Judge (Junior Division), Gurgaon (for brevity – the Trial Court) and **C. R. No. 3137 of 2023** has been preferred against the subsequent order dated 13.03.2023 passed by the said Court in the same suit.

7. An application under Order VIII Rule 1 read with Rule 10 CPC was filed in the above Civil Suit. On 22.12.2022, the case was fixed for filing reply to the aforesaid application. However, reply was not filed. Rather, a short date was requested on the ground that the arguing counsel for defendant was not available. The said request was vehemently opposed by the plaintiff, while submitting that the defendant was trying to delay the matter deliberately and it was prayed that right of the defendant to file written statement be closed.

8. The learned Trial Court, while observing that the suit was instituted on 05.07.2021 and even after 01 year and 04 months, defendant failed to file the written statement, struck off the defence of the defendant vide order dated 22.12.2022 and case was adjourned for evidence of plaintiff. The part of this order whereby case was adjourned for evidence of plaintiff is under challenge.

9. On 13.03.2023, an application on behalf of the defendant has been filed for recalling the aforesaid order dated 22.12.2022. Along with this application, written statement was also filed. Copy of the written statement was supplied to plaintiff and case was adjourned to file reply to the said

application. This order has been challenged in the second revision petition i.e. **C. R. No. 3137 of 2023.**

10. The main grievance of the plaintiff/petitioner is that vide order dated 22.12.2022, the learned Trial Court failed to pass a preliminary decree in favour of the plaintiff as well as defendant, declaring both the owners to the extent of 50% share in the suit property and vide order dated 13.03.2023, application filed by the defendant has been entertained and written statement has been placed on record instead of not entertaining the application.

11. Learned counsel for the plaintiff has argued that after giving sufficient time to file written statement, when the defendant failed to do the needful even after 529 days from the date of having filed the suit, his defence was closed only after plaintiff moved application under Order 8 Rule 1 read with Rule 10 CPC to close his right. Since there was no defence, so, only preliminary decree was required to be passed under Order 20 Rule 18 CPC. It has been further brought to the notice of this Court that at present, the plaintiff is in occupation of master bedroom and one room on the first floor and also, barsati floor. The entire ground floor area is in possession of the defendant which is much more than his entitlement. Reliance in this regard has been placed on a judgment of Hon'ble Supreme Court passed in case **Renu Devi vs. Mahendra Singh – Appeal (Civil) No.4231 of 1999, decided on 04.02.2003.**

12. Learned counsel for the defendant has argued that the defendant has already moved an application seeking recalling of order dated 22.12.2022, whereby right of defendant to file the written statement was closed. Learned Trial Court, vide order dated 13.03.2023, had already taken

on record written statement filed by the defendant. The plaintiff is the co-owner of half of the undivided unspecified share in the suit property and other half share is owned by the defendant.

13. I have heard the submissions of both the parties and perused the case files carefully.

14. Order 8 of CPC deals with filing of written statement, the grounds of defence and the procedure for the party to present the written statement to the Court. The suit was instituted by the plaintiff on 05.07.2021 and the defendant appeared in the case on 09.08.2021. Case was adjourned for filing written statement but defendant failed to file the same for a period of more than 1 year and 4 months. So, the learned trial Court was fully justified in not granting further adjournment for filing written statement. If no written statement is filed, then the provisions of Order 8 Rule 10 CPC are attracted.

15. In case *Vittal Daulat Lad Versus Ashok Govind Tawade, 2002(3) Current Civil Cases 253*, the Bombay High Court held that while disposing of the suit under Order 8 Rule 10 CPC, the Court can either dispose of the same on the basis of the case pleaded by the plaintiff in the plaint, or the Court can require the plaintiff to prove said case by producing necessary evidence in support thereof. In case *Balraj Taneja Versus Sunil Madan, 1999(4) R.C.R. (Civil) 438*, the Hon'ble Apex Court held that merely because written statement has not been filed, the court cannot proceed to pass judgment blindly. The Court should be little cautious in proceeding to pass judgment and must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the

plaint. It is a matter of satisfaction of the court which must be recorded in the judgment showing application of mind on the facts and law warranting a judgment to be passed. Under such circumstances, it can be held that provisions of Order 8 Rule 10 CPC are not mandatory. Passing of judgment in favour of plaintiff in case of non-filing of written statement by the defendant is subject to the satisfaction of the Court that there are no disputed facts in the plaint and judgment can be passed without asking the plaintiff to lead evidence. If Court comes to the conclusion that evidence is required to be led by the plaintiff to prove the claim by the plaintiff, then it cannot pass a judgment in favour of the plaintiff by invoking provisions of Order 8 Rule 10 CPC.

16. In the case in hand, suit was filed for partition on the ground that the plaintiff and defendant, who are brothers, are co-owners to the extent of 50% share in the property comprised in the suit. The learned trial Court in the impugned order dated 22.12.2022 without application of mind whether plaintiff is required to lead evidence or not, adjourned the case for evidence of the plaintiff. Since there was no written statement filed by the defendant, so trial Court was required to record its satisfaction whether suit deserves to be decreed on the basis of pleadings supported by documents annexed with the plaint or the plaintiff was required to prove its claim by leading evidence. Thus, part of the order dated 22.12.2022 whereby case was adjourned for leading evidence of the plaintiff, is not sustainable in the eyes of law. So, the Civil Revision No.640 of 2023 deserves to be allowed to that extent.

17. The order dated 13.03.2023 which has been challenged in Civil

Revision No.3137 of 2023, reads as under:-

“Today the case was fixed for evidence of plaintiff. However, at this stage an application for recalling the order dated 22.12.2022 under Section 151 of CPC has been moved on behalf of defendant. Copy supplied. Written-statement on behalf of defendant has also been filed. Copy supplied. Now the case stand adjourned to 19.05.2023 for filing reply to the aforesaid application.”

18. Since defendant has only moved an application for recalling order accompanied by written statement and no substantive order has been passed by the learned trial Court on the said application, so keeping in view that no order has been passed by the trial Court, so Civil Revision No.3137 of 2023 is premature and deserves to be dismissed on this ground.

19. In the light of above discussion, Civil Revision No.640 of 2023 is partly allowed. The learned trial Court shall pass speaking order in view the provisions of Order 8 Rule 10 CPC recording its satisfaction. Civil Revision No.3137 of 2023 is premature and is dismissed. However, it is hereby made clear that the learned trial Court shall pass speaking order as per Order 8 Rule 10 CPC and thereafter, if necessary, will consider in accordance with law the application moved by the defendant for recalling the order dated 22.12.2022.

20. Pending application, if any, shall also stand disposed of.

May 07, 2024
Monika/sanjeev

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.