



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2448-2023 (O&M)

Date of Decision:-09.08.2024

SHRI RISHI BALMIKI MANDIR AND OTHERS

... Appellants

Versus

GURDEV SINGH AND ORS.

... Respondents

-. -

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present:- Mr. C.S. Jattana, Advocate
for the appellants.

RITU TAGORE, J. (Oral)

1. In the present Regular Second Appeal, challenge is to the judgment and decree dated 18.01.2019, passed by learned Civil Judge (Junior Division), Rajpura, by which suit filed by appellants-plaintiffs for permanent injunction against the respondents-defendants was dismissed under Order 17 Rule 3 of the Code of Civil Procedure (in short as 'the CPC') for want of evidence and an appeal filed against the said decree, was also dismissed by the learned First Appellate Court vide judgment and decree dated 19.01.2022.

2. For easy reference, the parties to the *lis*, hereafter shall be referred by their original status in the suit.



3. The relevant facts for adjudication of this appeal are that, plaintiffs instituted a suit in representative capacity, on the pleas that they and other villagers belong to *Balmiki* community and have constructed a *Rishi Balmiki Mandir* in the village to perform their religious functions. Defendants interfere in their peaceful possession and use of the '*Mandir*'. Accordingly, sought a decree of prohibitory and mandatory injunction with prayer that defendants/agents/servants be restrained from interfering in their peaceful functioning /celebrating the religious functions in the *Rishi Balmiki Mandir*, situated within revenue estate of village Suhron, Tehsil Rajpura District Patiala and be also restrained from interfering in the possession of the site, shown as ABCDEFGH and raising any type of construction over the portion shown as EFGH in the site plan, and further defendants be directed to remove illegal encroachment upon a portion shown with letters EFGH in the site plan attached to plaint. Defendants, appeared and contested the claim of the plaintiffs, by asserting their ownership and settled possession on the suit land for the past 40-45 years. Further, claimed that, indeed the suit has been filed by Amarjit Singh, plaintiff No 15, with aim to grab the site of the alleged *Mandir* which was constructed on the public street. Plaintiff No.1- Shri Rishi Balmiki Mandir, has no right or concern over the suit land. It is claimed that defendants including Gurdev Singh, had constructed their houses and cattle sheds on the suit land. On these averments, prayed for dismissal of the suit.

4. Based on the pleading, the learned Trial Court framed issues, as detailed in the judgment of the learned trial Court. Thereafter, invited the



plaintiffs to present their evidence. Despite availing four effective opportunities, when plaintiffs failed to present any evidence on their behalf, the learned trial Court closed the evidence of the plaintiffs by order and decided the matter by invoking the provisions of Order 17 Rule 3 CPC. Finding no evidence on behalf of the plaintiffs to substantiate their version, learned trial Court dismissed the suit. First appeal preferred by the plaintiffs was also dismissed by the learned 1st Appellate Court affirming the judgment and decree of the learned trial Court.

5. Aggrieved by the decisions of the learned Courts below the plaintiffs, have preferred this appeal.

6. The learned counsel for the appellants-plaintiffs, assailed the findings of the Courts below, stating that dismissal of the suit and appeal by the learned Courts below has materially affected the rights of the plaintiffs. Their rightful claims have been prejudiced, who have been prevented from prosecuting their claims in the subject matter. Learned counsel submits that on 18.01.2019, the counsel for the plaintiffs was out of station, though appellant No 2, 4 and 6 were present for recording their evidence but the clerk of their counsel directed them to return to their village on account of the non availability of their counsel. The learned counsel for the appellants submits that due to the aforesaid reason, plaintiffs could not present their evidence. Learned counsel submits that litigation should be decided on merits and requests that plaintiffs be given an opportunity to present their evidence and contest the case on merits. Learned counsel further undertakes



to conclude the evidence in one opportunity. A prayer is made to set aside the impugned judgments.

7. I have heard the learned counsel for the appellants-plaintiffs and have gone through the paper-book alongwith record and finds no ground to overturn the findings of the Courts below, for the reasons that the plaintiffs failed to present any good and valid ground for the same. The perusal of record would reveal that plaintiffs despite taking four effective opportunities failed to present any evidence on their behalf. The plea of the plaintiffs that their counsel was out of station is contrary to the record. Perusal of the judgment of the learned trial Courts, indicates that presence of their counsel was marked on behalf of the plaintiffs on 18.01.2019, when their evidence was closed under Order 17 Rule 3 CPC and suit was dismissed for their failure to substantiate their case for want of evidence. Further, perusal of record does not indicate that any application was moved before the learned trial Court to rectify the order to the extent of marking the presence of the counsel on their behalf in the order dated 18.01.2019. Even in the grounds of appeal filed before the first appellate court and even before this Court, no challenge has been raised with respect to incorrect marking of the presence of their counsel on 18.01.2019. So much so, no application seems to have been moved before the learned trial Court on behalf of the witnesses to mark their presence and their inability to present the evidence on account of non availability of their counsel. In these circumstances, the reason assigned for non production of the evidence on 18.10.2019 is not made out from the record. Further, no reason has been assigned for non-production of evidence



on prior occasions/ dates when they were asked to present their evidence to support their case. Here it would be relevant to go through the provisions of Order 17 Rule 1 CPC which reads as under:-

“Court may grant time and adjourn hearing.—1 [(1) The Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three time to a party during hearing of the suit.”

8. Sub-Rule 2, Order 17, CPC, authorizes the Court to adjourn the case on certain grounds and even imposition of costs, resulting in undue adjournment. On the other hand, Order 17 Rule 3 CPC, authorizes the Court to proceed, in case, where party fails to produce evidence. Order 17 Rule 3 CPC reads as under :-

“Court may proceed notwithstanding either party fails to produce evidence, etc.—Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed [the Court may, notwithstanding such default,-

- (a) if the parties are present, proceed to decide the suit forthwith; or
- (b) if the parties are, or any of them is, absent, proceed under rule 2 ”

9. These relevant provisions provide that where a party, fails to produce the evidence or cause the attendance of the witnesses or fails to perform any other act necessary for the further progress of the case for which



time was allowed, may proceed to decide the suit forthwith or may proceed under Rule 2 (ibid), on the absence of any of the parties.

10. The learned counsel failed to point out any infirmity in the due exercise of the procedure adopted by the learned Courts below on their failure to present their evidence, despite taking opportunity and four adjournments for leading the evidence. The learned counsel failed to point out any factual discrepancy in the order passed by learned Courts below. To the considered opinion of this Court, the learned trial Court was justified in closing the evidence of the plaintiffs, having considered their negligent conduct in pursuing their case. After all, the case cannot be adjourned for evidence ad infinitum and court must at some stage or the other, decide the case, and Order 17 Rule 3 deals with the power of the Court, which envisages such a situation. The first Appellate Court was also justified in the affirming the judgment of the learned Trial Court.

11. Although, the power conferred on the Court under Rule 3 of Order 17 of CPC is a drastic power, which seriously restrict the remedy of the unsuccessful party for redress and has to be used sparingly in exceptional cases, but where the litigant deploy all sorts of methods in protracting the trial, the Courts must deal with such delays with stern hands. Order 17 Rule 3 CPC authorizes the court to decide the suit forthwith, where party despite taking opportunity fails to present evidence or cause attendance of witnesses or to perform any other act necessary for the progress of the case. In M/s Shiv Cotex vs. Trigun AutoPlast Pvt. Ltd. 2011 (3) ACJ 728 (SC), it is observed that '*It is high time for Courts that Courts become sensitive to*



delays in justice delivery system and realize that the adjournments do not dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. It was further held that the Courts, particularly trial Courts, must ensure that on every date of hearing, effective progress takes place in the suit.'

12. In view of the above discussion, this Court finds no illegality in the due exercise of procedure adopted by the learned trial Court, and affirmed by the learned appellate Court.

13. No other point urged.

14. Resultantly, no ground for interference is made out in the decisions rendered by the learned Courts below, much less involvement of any substantial question of law.

15. Accordingly, there is no merit in the appeal and is, hereby, dismissed.

16. Since the main case has been decided, pending miscellaneous application(s), if any, are also disposed of accordingly.

09.08.2024
Gaurav Sorot

(RITU TAGORE)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No