

(2020) 06 SHI CK 0133
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 297 Of 2020

Tilak Raj	Vs	APPELLANT
Tilak Raj		RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Order 26 Rule 9

Citation : (2020) 06 SHI CK 0133

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Dheeraj K. Vashisht

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. Having regard to the nature of the order this Court proposes to pass in the instant petition, there is no need to issue notice to the respondent, as it would unnecessarily burden him with the expenses of engaging services of a counsel to represent him in the instant proceedings.

2. By way of instant petition filed under Art. 227 of the Constitution of India, challenge has been laid to order dated 7. 2.2020 (Annexure P-5) passed by learned Senior Civil Judge, Una, District Una, Himachal Pradesh in CMA NO. 439-VI-14, in Civil Suit No. 1877/2013, titled Tilak Raj vs. Tilak Raj, whereby learned Court below allowed the application filed by the respondent/plaintiff (hereinafter, 'plaintiff') under Order XXVI, rule 9 CPC and appointed a local commissioner to measure the land as per norms and find out whether there is encroachment in Khasra No. 2149 or where letters ABCDEF in the site plan are depicting the encroachment of the defendant on the suit land.

3. Precisely the grouse of the petitioner/defendant (hereinafter, 'defendant') is that learned Court below, while allowing application under Order XXVI, rule 9

CPC, did not afford opportunity of hearing to the defendant, as such, order appointing local commissioner, cannot sustain.

4. Having heard learned counsel for the parties and perused the material available on record, vis-à-vis reasoning assigned in the impugned order by learned Court below, this Court finds that before recoding of evidence, plaintiff had filed an application under Order XXVI, rule 9 CPC, paying therein for appointment of a local commissioner, but, at that time, learned Court below refused to consider the same on the ground that the plaintiff has not yet adduced any evidence in support of his pleadings. On 6.8.2010, learned Court below though directed the plaintiff to lead evidence in support of his claim, but kept the application having been filed by him under Order XXVI, rule 9 CPC, pending and ordered that same shall be taken up at a later stage, if need arises.

5. Material available on record reveals that learned Court below, after having heard arguments in the main matter, adjourned the matter to 7.2.2020, for pronouncement of judgment/final order. But on 7.2.2020, Court, after having noticed that the application filed by the plaintiff under Order XXVI, rule 9 CPC is pending adjudication, deferred the pronouncement of final order/judgment and proceeded to appoint local commissioner to measure the land as described hereinabove, after allowing the application.

6. True it is that in terms of dated 6.8.2010 application having been filed by the plaintiff was to be heard and decided after recording of evidence but it appears that after closing of evidence neither the plaintiff informed the court below with regard to pendency of the application filed by him, nor the learned Court below decided the same before proceeding to hear the parties on merit. Suddenly, on 7.2.2020, when the matter was listed for pronouncement of final order, court, without affording opportunity of hearing to the defendant, proceeded to order for appointment of local commissioner. Order dated 7.2.2020, nowhere suggests that learned Court below, while considering appointment of local commissioner, bothered to look into the evidence already led on record by respective parties to ascertain the requirement, if any, of appointing local commissioner.

7. Consequently, in view of above, impugned order dated 7. 2.2020 cannot sustain and same is quashed and set aside. Present petition is disposed of with a direction to learned Court below to decide the application under Order XXVI, rule 9 CPC filed by the plaintiff afresh after hearing both the parties. Learned counsel for the defendant undertakes to cause presence of his client before learned Court below on 8.7.2020, enabling learned Court below to do the needful in terms of instant order. Petition stands disposed of alongwith all pending applications.

8. Since matter is hanging fire since 2009, this Court hopes and trusts that learned Court below would make all efforts to decide the application latest by 31.7.2020.