
(2008) 07 RAJ CK 0089
In the Rajasthan High Court

Vipin Goyal

APPELLANT

Vs

Additional District and Sessions Judge No. 1 and Another

RESPONDENT

Date of Decision : 28-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2008) 07 RAJ CK 0089

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Judgement

Narendra Kumar Jain, J.—The petitioner in person has filed an application for early listing of the writ petition which is not opposed by learned Counsel for the respondent No. 2, therefore, the same is allowed and at the request of petitioner and learned Counsel for the respondent, the writ petition is being heard and is being disposed of finally.

2. Heard the petitioner in person as well as the learned Counsel for the respondent No. 2.

3. The plaintiff filed a suit for eviction in respect of disputed property in the trial court which was decreed vide judgment and decree dated 15th November, 2006. Being aggrieved with the same, the defendant respondent No. 2 ? Gyan Chand filed an appeal before the first appellate court alongwith the stay application under Order 41 Rule 5 CPC. The plaintiff opposed the application under Order 41 Rule 5 CPC by filing a written reply. The plaintiff also filed separate application u/s 151 CPC to pass an order in respect of mesne-profit under Order 41 Rule 5 CPC in respect of disputed property during the pendency of the appeal. The learned appellate court vide its order dated 21st February, 2007 directed that plaintiff will be entitled to receive the monthly rent as per the rate fixed by the trial court and stayed the eviction proceedings.

4. The petitioner Mr. Vipin Goyal submits that the learned appellate court committed an illegality in not passing an order of mesne-profit in respect of

disputed property during the pendency of the first appeal. The learned Counsel for the respondent No. 2 submits that matter is already fixed before the first appellate court on 13th August, 2008 for passing an order on the application u/s 151 CPC in respect of mesne profit in respect of disputed property. The petitioner also admits that the matter is fixed before the first appellate court for orders on his application u/s 151 CPC regarding fixing of amount of mesne-profit to be paid by defendant to the plaintiff.

5. After hearing the learned Counsel for both the parties, I am of the view that this writ petition can be disposed of by directing first appellate court to decide the matter relating to mesne-profit in respect of disputed property on the next date i.e. 13th August, 2008 and in case the same is not decided on that day, then to decide the same within 10 days thereafter.

6. Consequently the writ petition is disposed of with a direction to Additional District & Sessions Judge No. 1, Ajmer to decide the matter relating to mesne-profit in respect of disputed property on 13th August, 2008 and in case the same is not decided on that day for some unavoidable circumstances, then he will decide the same within a period of 10 days thereafter.

7. With the aforesaid observation and direction, the writ petition stands disposed of with no order as to costs.

8. A copy of this order may be sent to the Court of Additional District & Sessions Judge No. 1, Ajmer.

Since the writ petition itself has been disposed of, the stay application connected therewith does not survive and it also stands disposed of.