

(2013) 08 P&H CK 0839

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 2220 of 2012 (O and M)

Jai Bhagwan and Others

APPELLANT

Vs

Bahadur and Others

RESPONDENT

Date of Decision: Aug. 16, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 1
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: Vikram Singh, for the Appellant; Atul Gaur, Advocate, for Mr. Sumeet Goel, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Paramjeet Singh, J.

Instant revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 05.04.2012 (Annexure P/6) passed by learned Civil Judge (Junior Division), Karnal whereby application moved by the petitioner for framing of additional issues, has been dismissed. Brief facts of the case are that the petitioners-plaintiffs filed a suit for permanent injunction. After notice, the respondent-defendants appeared and filed their written statement. Thereafter, replication to the written statement has been filed. During the course of proceedings, an application has been filed by the petitioners for framing of additional issues stating therein that the petitioners have clearly pleaded in their replication that the respondents have illegally and unlawfully encroached upon the suit property and raised construction and also pleaded in the replication for restoration of their possession and the petitioners have also adduced evidence in this regard, but inadvertently the issue regarding the restoration of possession could not be framed which is essential for deciding the controversy involved in the present suit. The learned trial Court vide order dated 05.04.2012 (Annexure P/6)

dismissed the application on the ground that the pleadings consists of only plaint and written statement as per Order 6 Rule 1 CPC and the issues are framed on the basis of the pleadings and not on the basis of replication. Hence, this revision petition.

2. I have heard learned counsel for the parties and perused the record.

3. Perusal of the record reveals that application has been dismissed primarily on the ground that replication does not form a part of the pleadings. The finding of the Court that the replication is not covered in pleadings under Order 6 Rule 1 CPC, is not sustainable in the eyes of law. The Hon"ble Supreme Court in K. Laxmanan Vs. Thekkayil Padmini and Others, has held that replication is a part of the pleadings.

4. The Hon"ble Supreme Court in K. Laxmanan"s case (supra) has held as under:-

31. Pleadings as we understand under the CPC (for short the "Code") and as is defined under the provision of Rule 1 Order 6 of the Code consist only of a plaint and a written statement. The respondents/plaintiffs could have filed a replication in respect to the plea raised in the written statement, which if allowed by the court would have become the part of the pleadings, but mere non filing of a replication does not and could not mean that there has been admission of the facts pleaded in the written statement. The specific objection in the form of denial was raised in affidavits filed in respect of the injunction applications which were accepted on record by the Trial Court and moreover the acceptance on record of the said affidavit was neither challenged nor questioned by the present appellant.

In view of the law laid down in K. Laxmanan"s case (supra), present petition is allowed. Impugned order dated 05.04.2012 passed by learned Civil Judge (Junior Division), Karnal is set aside. The trial Court is directed to pass a fresh order in the light of K. Laxmanan"s case (supra).