

CS DJ 1805/16
JAWAHAR SINGH AND ORS Vs. BALA DEVI

24.11.2022

Present: Sh. Hemender Singh Kashyap, counsel for plaintiffs.
D-1 is stated to be ex-parte.
Sh. Arvind Vats, counsel for D-2.

Heard. Perused.

Counsel for plaintiff submits that an application u/o
8 Rule 10 CPC is pending disposal.

Defendant no-1 is stated to be ex-parte and
defendant no-2 has not filed any reply to said application.

Submissions on said application heard.

Perusal of record shows that the present suit was
filed by plaintiff in Hon'ble High Court of Delhi in the year
2011. WS filed on behalf of defendant no-1 was not taken on
record vide order dated 21.08.2013. Vide order dated
13.01.2014, right of defendant no-1 to file WS was closed.

Perusal of record further shows that issues were
framed in the present matter on 29.07.2016 and since then the
present case is at the stage of PE. Application in hand has been
filed by plaintiff on 21.12.2021.

Order 8 Rule 10 CPC postulates as under :-

10. Procedure when party fails to present written statement called for by Court. – Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up.

Contd../-

A bare perusal of aforesaid provision shows that passing of judgment is not mandatory and the court has a discretion to pass the judgment or make any other order qua the suit pending before it.

In the present case, issues have already been framed in the year 2016 and matter is at the stage of PE since then.

Keeping in view the totality of facts and circumstances, I am of the considered view that plaintiff is not entitled to judgment/decree forthwith/at this stage.

Hence, application u/o 8 Rule 10 CPC stands dismissed.

Now to come up on 15.12.2022 at 2.00 PM for PE.

(Deepak Dabas)
ADJ-1(North)/Rohini Courts
Delhi/24.11.2022