

Order 16

11.09.23

Today is fixed for showing cause by the plaintiff as to why the suit shall not be dismissed.

The defendant nos 1 to 3 on one hand and the defendant no 4 on the other file haziras. Plaintiff files an application u/o 26 Rule 9 read with section 151 CPC along with a petition praying for fixing a date of hearing of the said application. He also files another petition showing cause in terms of earlier order. Copies have been served. Objection has been raised.

Heard the Ld. Advocates for all the sides in respect of the petition filed by the plaintiff showing cause.

It appears from the record that after the instant suit was fixed for P.Hearing on 10.1.23, 24.3.23, 17.5.23 & 23.6.23 when the same was adjourned on all the occasions mainly on the ground of prayers for adjournment sought for by the plaintiff. The suit was lastly fixed on 3.8.23 as a last chance with costs. On that date the plaintiff again came up with a prayer for adjournment, which was rejected and this day was fixed directing the plaintiff to show cause as to why the suit would not be dismissed.

Now the plaintiff has come up with his petition stating that as he could not come to court on 3.8.23 due to unavoidable circumstances, his application under Order 26 Rule 9 read with section 151 CPC, which is essentially necessary for bringing before this court the extent of encroachment made by the defendants, could not be affirmed and filed before this court on that date though the same was otherwise ready.

The Ld. Advocates for the defendants vehemently oppose the prayer of the plaintiff mainly on the ground that the plaintiff is causing unnecessary delay in disposal of this suit without any justifiable reason while similar prayer of the plaintiff u/o 26 Rule 9 CPC was earlier rejected by this court.

Considered this respective submissions as well as the grounds assigned by the plaintiff in his petition. It also appears that the earlier application under Order 26 Rule 9 CPC filed by the plaintiff was rejected mainly on the ground of absence of necessary proof as alleged in the said application.

Be that as it may, when the plaintiff has now come up with another application along with copies of necessary documents in support of his contention of encroachment allegedly made by the defendants in the suit property as well as for providing him with an opportunity to place his case for disposal of the disputes involved between the parties on merit and more so when the defendants will get their opportunity to controvert the contention raised by the plaintiff in the plaint as well as in his application u/o 26 Rule 9 Read with section 151 CPC filed this day, I feel that the cause shown by the plaintiff should be accepted subject to compensating the defendants adequately for the harassment suffered by them for the cause of the plaintiff.

Hence it is

Ordered

that the cause shown by the plaintiff in his petition filed this day is treated to be sufficient and accepted subject to payment of cost of Rs. 1000/- to each set of defendants.

Fix 24.11.23 for payment of cost as well as for hearing of the application u/o 26 Rule 9 read with section 151 CPC filed this day by the plaintiff. The defendants are at liberty to file their written objection against the said application, if any, in the meantime.

D/C by me

Judge 2nd Bench

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