

**581 of 2017 Hakam Singh Vs. Gurmeet Kaur etc .
CNR No. PBPTC00009902017**

Present: Sh. Amarjeet Singh Bajwa, Adv, counsel for plaintiff.
 Sh. B.S. Ghuman, Advocate, counsel for defendants
 No.1 to 11.

Order

This order of mine shall dispose of an application filed by counter claimant/applicant for permission to lift the wheat straw (Toori), wood logs and dung cakes from the rooms marked as X and Y in the site plan of the counter claim.

2. Applicant has contended that he has filed written statement along with counter claim against the suit filed by plaintiff and after hearing the arguments of both the parties on application under Order 39 Rule 1 and 2 CPC Court has ordered the parties to maintain status quo regarding the suit property. Applicant has contended that he has clearly mentioned in the counter claim that suit property is under his possession which consists of three constructed rooms marked as X,Y and Z in the site plan from which room X is filled with Wheat Straw and room Y is filled with wood logs and dung cakes which are kept by the counter claimant and the same is under the possession of counter claimant. It is stated that applicant is under obligation to comply the order to maintain status quo but wheat straw is required to feed the cattle and Dung Cake and wood logs are required to be burnt as fuel in the kitchen. Moreover it is stated that these goods are perishable in nature and the wheat straw, dung cakes and wood logs already stored in another place are nearing an end for which reason applicant requires to lift the same from room marked as X and Y in site plan of counter claimant.

3. Upon notice of the application plaintiff filed a reply strongly opposing the application. Plaintiff has denied the averments made in the application and has contended that the entire material is belonging to plaintiff who is in peaceful, actual and physical possession of the suit property while applicant is wrongly claiming the above said material. Further plaintiff has contended that by way of the present application

applicant wants to grab the above said material which is belonging to and is in possession of plaintiff. Therefore plaintiff has prayed for dismissal of the application.

4. I have heard the arguments of learned counsel for the parties and have gone through the case file very carefully.

5. The contention of applicant is that he has filed a counter claim to the suit filed by plaintiff in which he has clearly mentioned that suit property is in his possession which consists of three constructed rooms X, Y and Z. Applicant has contended that wheat straw, dung cakes and wheat logs are stored in rooms X and Y which are required to be removed from these rooms for purpose of feeding the cattle and for use as fuel in kitchen. On the other hand plaintiff has denied these averments of applicant and has contended that above said material belongs to him and is kept in his possession in the suit property. Perusal of file reveals that plaintiff has filed the suit seeking permanent injunction for restraining the defendants from interfering in his peaceful possession and from taking forcible possession of the suit property whereas defendants no.1 to 4 have filed a counter claim in which they have sought the similar relief against plaintiff stating that they are in possession of the suit property. Further learned predecessor has already decided the application under order 39 rule 1 and 2 CPC vide order dated 30.11.2018 in which both the parties have been directed to maintain status quo regarding possession over the suit property and it has been observed in that order that the claims of both the parties regarding possession over the suit property in their respective pleadings are matter of evidence due to which they have been directed to maintain status quo regarding possession till final decision of the case. It is pertinent to mention here that while deciding the application under Order 39 Rule 1 and 2 CPC filed by the counter claimant learned predecessor has already taken a note regarding the contention of counter claimant/applicant that wheat straw, wood log and dung cake are stored in room X and Y of the suit property. After considering these facts learned predecessor has already directed a status quo order. As such after going

through the record of the file I have seen that even during the adjudication on temporary injunction there was no prima facie case in favour of either party so as to pass an order in favour of that particular party due to which it was observed by the court that the contention of both the parties are matter of evidence and they were directed to maintain status quo but through the present application applicants are again trying to reagitae their contention regarding possession over the suit property . As such any direction at this stage regarding removal of wooden logs, Dung Cakes and wheat straw from the suit property to any of the parties cannot be ordered as the same shall amount to giving a finding regarding possession of one of the parties even before leading of any evidence by the parties which shall frustrate the purpose of filing the suit and counter claim by both the parties. At this stage the case is already fixed for evidence of plaintiff when this application has been filed and even the nature of goods mentioned in the application are not perishable. As such in view of the discussion made above the application in hand stands dismissed. However anything said or observed hereinabove shall have no bearing on merits or final outcome of present case.

**Pronounced:
3.8.2019**

(Baljinde Kumar)

Stenographer.

**(Ramandeep Kaur)
Civil Judge (Jr. Division),
Samana.
UID No.PB-0543**

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Argument heard. Vide my separate detailed order of even date the application for permission to lift the wheat straw (Toori), wood logs and dung cakes from the rooms marked as X and Y in the site plan of the counter claim is dismissed. Now to come up on 18.9.2019 for evidence of the plaintiff.

**Pronounced:
3.8.2019**

(Baljinde Kumar)

Stenographer.

**(Ramandeep Kaur)
Civil Judge (Jr. Division),
Samana.
UID No.PB-0543**