

RSA No. 379 of 2008

08.08.2019 Present: Mr. Ajay Sharma, Senior Advocate with Mr. Rakesh Chaudhary, Advocate, for the appellants.

Ms. Salochna Rana, Advocate, for the respondents.

CMP No. 2670 of 2019

The present application under Section 151 of the Code of Civil Procedure has been maintained by the applicants/respondents for vacation of order dated 08.08.2008, passed by this Court in CMP No. 671 of 2008. As per the applicants, vide order dated 08.08.2008, the parties were directed to maintain status quo qua the suit land. However, since old house of the applicants is situated over the land in dispute, qua which, stay order has been obtained, the applicants cannot repair their house, which with the passage of time is now in a dilapidated condition. Furthermore, on the recommendation of the concerned Gram Panchayat an amount of Rs. 1,30,000/- has been sanctioned in favour of Smt. Usha Rani, wife of respondent No. 1(e), but, on account of interim order passed by this Court, the said amount cannot be utilized. As such, order dated 08.08.2008 may be modified to the extent that the applicants/respondents may be permitted to construct/repair their house. Reply to the application has been filed, wherein it has been averred that earlier also, on the same and similar grounds application was filed in the year, 2016, which was dismissed and present application, which is devoid of merits, also deserves dismissal.

Learned counsel for the applicants has argued that now the Government has sanctioned an amount of Rs. 1,30,000/- for construction of the house of the applicants, but the same cannot be constructed since there is status quo order.

On the other hand, learned Senior Counsel appearing on behalf of the non-applicants has argued that in case the impugned order is modified, the appeal will become infructuous.

After hearing the learned counsel for the parties and going through the records, this Court finds that the appeal is pending adjudication since 2008 and taking into consideration the fact that house of the applicants are in dilapidated condition, this Court finds that present is a fit case where permission to construct/repair of house is required to be granted to the applicant, but, since the appeal is pending adjudication, it would be appropriate if the case is heard finally.

So, Taking into consideration the peculiar facts and circumstances of the case, list the case for final hearing on **12th September, 2019.**

It is made clear that in case the appeal is not heard on the date fixed for any reason, appropriate order shall be passed in the application or appeal.

(Chander Bhusan Barowalia)
Judge

August 8, 2019
(raman)