

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

CR No. 75/2019

Pronounced on: 1. .06.2020

Sudesh Kumar

...Petitioner(s)

Through: Mr. M. S. Choudhary, Advocate

vs.

Mansa Ram and others

...Respondent(s)

Through: None

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

- 01.** Petitioner, who was the plaintiff in the suit pending in the Court of Munsiff, 1st Class, Bishnah, seeks a direction to the Trial Court to decide the civil suit File No. 74/Civil titled *Sudesh Kumar Vs. Mansa Ram & ors.*, instituted on 27.12.2006.
- 02.** This petition was filed on 19.10.2019, by which time, the Constitution of Jammu & Kashmir stood repealed, therefore, Section 104 of the said constitution was not required.
- 03.** After this petition was filed, this Court vide order dated 23.12.2019 directed the Trial Court to furnish the status report of the case. There is a report of the Registry about the receipt of status-report dated 01.02.2020 but there is no date of its receipt is mentioned.
- 04.** A civil case of this nature should have not been allowed to remain pending for such a long time. The petitioner has produced certified copies of the minutes of proceedings. It is clear that the defence counsel was asked to file written statement by 29.01.2007 but has produced it only on 02.11.2007 after seeking six adjournments.

05. Order-7 of the CPC was amended only in 2004 but that does not mean that the Trial Court was powerless to point down the defence by passing preemptory orders. Issues were framed on 07.05.2008 and out of these issues, first two issues are legal and rest two are issues of law.

06. Trial Court failed to prove the burden in terms of Rule-2 of Order 14 of the Code of Civil Procedure. However, the burden to prove Issue Nos.3 & 4 is only on the plaintiff and the defendants had to produce evidence in rebuttal.

07. The file is pending for recording of the evidence since 03.06.2009. Patwari Halqa Arnia was present on 24.03.2016 but was not examined. If there is no revenue record on the file, the Patwari should not have been examined. It appears that the Court while entertaining the suit ignored the mandatory provision of Order-7 Rule-3 of the Code of Civil Procedure. Had this been observed, the Patwari could have been examined. It appears from orders dated 08.03.2016 and 24.03.2016, Patwari Ajay was present but could not be examined as some reports sought to be proved which were prepared by one Shashipal Patwari. Patwari-Shashipal was subsequently summoned as per order dated 31.01.2019. This is a pathetic situation in which the suit for injunction instituted on 27.12.2006 which is still pending for nearly 15 years because different Presiding Officers had dealt with the case in most casual manner.

08. After the issues were framed, case continued to be adjourned in a routine manner without considering the provisions of the Code of Civil Procedure and more particularly, Rule-4 of Order-10 CPC. Once the interim injunction was granted on the date when the suit was filed, Order-39 Rule-3(A) CPC had to be complied.

09. It appears that the Presiding Officer did not take care to follow the relevant procedure of the Code of Civil Procedure before giving adjournment; for example, the plaintiff was directed to produce evidence vide order dated 07.05.2008. He had not summoned any witness. Plaintiff's witness was recorded on 20.08.2010 and his witness Ajit was examined on 26.10.2010. Another PW-Balkar Singh was examined on 17.02.2011. It was only on 21.10.2013 that the plaintiff's evidence was closed. Between 12.02.2011 to 21.10.2013, the case was adjourned more than 25 times. The defence were directed to lead evidence on 28.10.2013. Order dated 30.04.2015 shows that the Patwari is being recalled but until filing of the petition, he could not be served and the case continued to be adjourned without taking steps. This is nothing but a very casual approach with the case. It is sad reflection on the working of the Trial Court and pathetic situation in which the Advocates representing the parties are equally responsible for creating the sorry state of affairs.

10. Be that as it may, the Presiding Officer is directed to complete the evidence of the defence within one month from the date of receipt of this order and decide the case within one month thereafter, with intimation to the Registrar Judicial of this Court. Registry to send copy of this order to the Court of Munsiff, Bishnah.

11. Disposed of as such.

(Sindhu Sharma)
Judge

Jammu
1st .06.2020
Ram Murti

Whether the order is speaking:	Yes
Whether the order is reportable:	Yes/No