

Bhanwar Singh and anr. Vs. Gir Raj Prasad

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Court : Rajasthan

Decided On : Sep-19-1977

Reported in : AIR1978Raj20; 1977()WLN618

Judge : P.D. Kudal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 16, Rule 1

Appeal No. : Civil Revn. No. 127 of 1977

Appellant : Bhanwar Singh and anr.

Respondent : Gir Raj Prasad

Advocate for Def. : S.K. Keshot, Adv.

Advocate for Pet/Ap. : D.K. Soral, Adv.

Disposition : Revision allowed.

Judgement :

ORDER

P.D. Kudal, J.

1. This revision petition under Section 115, C.P.C. is directed against the order dated 30th April, 1977, of the learned Additional Munsiff-cum-Judicial Magistrate No. 2, Bharatpur, whereby the defendant's application dated 20th January, 1977 under Order 16, Rule 1, C.P.C. read with Section 5 of the Limitation Act was dismissed.

The brief facts which are relevant for the disposal of this revision application are that Gir Raj Prasad, plaintiff, filed a suit against Gulab Singh and Bhanwar Singh defendants for a permanent injunction restraining the defendants from in any way interfering with the possession of the plaintiff over the suit land. The suit was presented before the trial Court on 17th July, 1972. On 14th October, 1974, issues were framed. The plaintiff filed a list of witnesses on 19th November, 1974. Defendant No. 1 Gulab Singh died on 24th February, 1976. An application for bringing his legal representatives on record was filed on 6th May, 1975 praying that Bhanwar Singh who was already arrayed as defendant No. 2 in the suit along with Smt. Harni widow of the deceased Gulab Singh be brought on record. This application was allowed on 13th December, 1975. Amended plaint was filed on 2nd January, 1976, and the list of witnesses of 19th November, 1974 was allowed on 12th March, 1976. Plaintiff's evidence commenced from 15th July, 1976, and was closed on

26th November, 1976. The case was listed on 15th January, 1977 for the evidence of the defendants. On 20th January, 1977, a list of witnesses was filed on behalf of the defendants. This list was accompanied by an application under Order 16, Rule 1, C.P.C. read with Section 5 of the Limitation Act duly supported by an affidavit of Bhanwar Singh defendant. The learned trial Court dismissed the application on 30th April, 1977 holding that the defendants ought to have submitted the list of witnesses within one month from the date of framing of the issues, and even in the evidence in rebuttal the list could have been filed within 15 days of the closing of the evidence of the plaintiff on issues Nos. 1 and 2. According to the learned trial Court the list of witnesses filed by the defendants was barred by 31 days. The list was accordingly rejected. Feeling aggrieved against this order of the learned trial Court the defendant-petitioners have filed the present revision petition.

2. On behalf of the defendant-petitioners, it was contended that the learned trial Court allowed the plaintiff's list which was also presented late on payment of Rs. 10 as costs on 12th March, 1976. It was further contended that Gulab Singh died on 24th February, 1975, and as he was looking after the conduct of the case, the list has been filed late, when defendant Bhanwar Singh came to know that the list had not already been filed. It was further contended that the plaintiff has neither cared to file any reply to the application dated 20th January, 1977, nor any counter-affidavit has been filed. It was further contended that the provisions of Order 16, Rule 1, C.P.C. are not meant for curbing the rights of the parties, but they are intended to ensure speedy disposal and to ensure that a litigation is not prolonged unduly. Reliance was placed on *Baxiram v. Ashwani Kumar*, 1965 Raj LW 111, *Sangrarn Singh v. Election Tribunal, Kotah*, AIR 1955 SC 425 and *Balwant Singh v. Firm Raj Singh*, AIR 1969 Punj 197.

3. On behalf of the plaintiff-respondent it was contended that Bhanwar Singh was already a party to these proceedings from the very commencement of the suit. It was further contended that Bhanwar Singh has been extremely negligent in not filing the list of witnesses within 30 days of the framing of the issues or within 15 days of the closing of the plaintiff's evidence. It was also contended that each day's delay has to be explained if the powers under Section 5 of the Limitation Act are invoked for condoning the delay, and in the instant case, the defendants have not explained each day's delay. It was also contended that the suit was filed on 17th July, 1972, and if the defendants are still permitted to lead evidence it would mean unnecessary prolongation and protraction of the litigation. It was, therefore, contended that there is no force in this revision petition which should be dismissed with costs.

4. The respective contentions of the learned counsel for the parties have been considered and the record of the case carefully perused.

5. In *Baxi Ram v. Ashwani Kumar*, 1965 Raj LW 111, it was held that:--

'The proviso no doubt lays down that this second opportunity can only be availed of with the permission of the Court. There is yet another provision contained in Sub-rule (ii) which gives power to the Court to allow a party to produce witnesses despite the fact that it has failed to file a list under the main Sub-section (1) or the proviso to it as the case may be. It is significant that it makes it obligatory for the Court to record reasons both for permitting as well as for refusing permission under this provision. That indicates the anxiety of the High Court to ensure that the subordinate courts should neither allow a party to prolong litigation unduly, nor should they shut out

material evidence necessary for a just decision of the case. The Court has ample power to let in the latter type of evidence under this Sub-rule despite some negligence on the part of a party.'

6. It was further held that it is quite clear that permission under the proviso should generally be allowed unless there are strong reasons for withholding it. Formerly reasons had only to be given for granting permission under it. Now reasons have also to be given for refusing such permission.

7. In *Sangram Singh v. Election Tribunal, Kotah*, AIR 1955 SC 425, it was held that (at p. 429) :--

'A Code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.'

8. In *Balwant Singh v. Firm Raj Singh*. AIR 1969 Punj 197, it was held that (at pp. 199-200) :--

'Promptitude and despatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot be construed in a manner which would hamper justice. As a general rule, evidence should never be shut out. The full opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process-fee arises from negligence or carelessness. However negligent or care-loss may have been the first omission to give evidence or to deposit process-fee, it should be allowed if that can be done without injustice to the other side. There is no injustice if the other side can be compensated by costs.'

9. Plaintiff's evidence was closed on 26th November, 1976. The first date of hearing for leading the defendant's evidence was 15th January, 1977. An application for allowing the list of witnesses was presented on 20th January, 1977. There is no denying the fact that the defendants have been negligent. In terms of Order 16, Rule 1, C.P.C. the list of witnesses ought to have been filed within 30 days from the date the issues were struck. In the petition dated 20th January, 1977, the defendant has pleaded that his deceased father Gulab Singh used to look after the conduct of the case, and that it is only after his death that the defendant started looking after the case. The provisions of Order 16, Rule 1, C.P.C. as applicable to the State of Rajasthan, gives ample discretion to a Court of law to give reasonable opportunity to a party who has failed to file the list of witnesses within the stipulated time. The fact that the deceased, Gulab Singh, used to look after the conduct of the case has not been denied by the plaintiff as no counter-affidavit has been filed. Looking to all the facts and circumstances of the case, it appears expedient and necessary in the interests of justice that a last opportunity may be afforded to the defendants to lead

evidence as has been laid down in the rulings cited above. The procedures are nothing but handmaids of justice. They cannot be construed in a manner which would hamper justice. Shutting out the evidence of the defendant in a suit which relates to immovable property would not, in any way, subserve the ends of justice. In these circumstances, it appears reasonable that the defendants are given an opportunity of leading evidence.

10. The defendants would be permitted to lead evidence as per list dated 20th January, 1977 on payment of Rs. 100 as costs to the plaintiff-respondent. The defendants shall further undertake to produce the witnesses on hearing fixed before the trial Court. The defendants would be entitled to get the witness summoned through Court but that would in no manner entitle them to further adjournments because it is the defendants' primary duty to produce evidence at their instance.

11. For the reasons stated above and subject to the observations made above, the revision petition is allowed and the order dated 30th April 1977 passed by the trial Court is hereby set aside and permission is hereby granted to the defendants to lead evidence as per the list of witnesses filed on 20th January, 1977.

12. The parties are directed to appear before the learned trial Court on 28th October, 1977. The defendants are directed to produce their evidence on 28th October, 1977. The office is directed to send the original file of the case immediately to the trial Court.

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