

Badami Devi and ors. Vs. Sanjay Khandelwal and anr.

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Court : Delhi

Decided On : Nov-03-2014

Judge : Valmiki J. Mehta

Appellant : Badami Devi and ors.

Respondent : Sanjay Khandelwal and anr.

Advocate for Def. : Mr. Ujjawal Jha, Mr. Boony Laishram

Advocate for Pet/Ap. : Mr. Anuroop P.S

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + CM(M) No.1080/2013 3rd November , 2014 % BADAMI DEVI & ORS. Through:Petitioners Mr. Anuroop P.S.Advocate. VERSUS SANJAY KHANDELWAL & ANR. Through: Respondents Mr. Ujjawal Jha and Mr. Boony Laishram, Adv. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This petition under Article 227 of the Constitution of India impugns the order passed by the trial court dated 6.8.2013 by which the trial court has rejected the prayer of the petitioners/plaintiffs for sending further admitted documents to FSL as was demanded by FSL in order to prepare the report.

2. On 4.4.2011, the trial court passed the following order referring the issue of signatures of the parties to FSL and for giving its report:1. An application under Section 45, Indian Evidence Act, filed by the plaintiff is pending disposal. By way of the application, plaintiff has prayed that the signatures of defendant no.1 on the counter foils on recent receipt dated 10.1.2009, 10.2.2009, 10.03.2009 and 10.04.2009 and signatures of the plaintiffs on the recent receipts on even dates be sent for examination by an expert of Forensic Science Laboratory.

2. Learned counsel for the defendants have not opposed the application.

3. During admission and denial of documents held on 15.02.2011, the documents have been denied by the opposite parties respectively.

4. Since, it is essential for just decision in the matter that the signatures on the rent receipts and counter foils be examined by an expert.

5. This Court therefore deems it appropriate to exercise its power under order XIV Rule 4 for examination of an handwriting expert. It is hereby ordered that summons as per Order V Rule 30, Civil Procedure Code, 1908 issued vide PF to the Director NICFS, Rohini to provide this Court the assistance of a handwriting expert, returnable on 06.05.2011.

6. The application stands allowed as per the abovementioned directive.

3. The issue with respect to disputed signatures, and the report of the FSL on that aspect arose because of the dispute as to the rate of rent with respect to the suit premises. In Delhi, if rent is more than Rs.3,500/- per month, then premises are outside the protection of the Delhi Rent Control Act, 1958 and if the rent is below Rs.3,500/- per month then tenant has protection of Delhi Rent Control Act whereas the petitioners/plaintiffs claim that the rent is above Rs.3,500/-, the respondents claim otherwise to deny the jurisdiction of the civil court.

4. CFSL informed the Court after receiving the court order dated 4.4.2011 that in order to prepare the report, further documents containing admitted signatures of the parties were required. It is in pursuance to this request that the petitioners filed the subject application to send to the FSL the admitted documents containing the

signatures of the petitioners/plaintiffs and the defendants being signatures of defendants on the vakalatnama , affidavit and the signatures of the plaintiffs on the plaint etc. It is not disputed before me that signatures on the documents to be sent are the undisputed signatures of the parties.

5. I may note that the right of the respondents to file reply to this petition was closed by a learned Single Judge of this Court vide order dated 6.5.2014.

6. I am surprised at the impugned order which is passed by the trial court in a suit for possession, damages etc against the respondents/tenants by the petitioners/plaintiffs/landlords inasmuch as, in fact even an application on behalf of the petitioners/plaintiffs was not required once FSL itself had asked for further documents containing admitted signatures to prepare the experts report under Section 45 of the Evidence Act, 1872, pursuant to the court order dated 4.4.2011 and the court below in fact suo moto should have asked for documents containing admitted signatures of the parties and should have thereafter sent them to FSL for it to prepare the experts report. Surprisingly however the trial court dismissed the application filed by the petitioners/plaintiffs.

7. Learned counsel for the respondents wanted to point out certain orders passed by the trial court as per which according to the respondents a similar prayer by means of the application had been dismissed including the order dated 6.8.2013 has been declined, and to which all that is required to be stated is that no such order is before me as admittedly the respondents filed no reply to the present petition and the right to file the reply was closed. However even for the sake of arguments if I assume that there is such an order by which a similar prayer of the petitioners/plaintiffs was rejected, I do not think that such orders are in the nature of res judicata once FSL itself requires documents containing admitted signatures of the parties to prepare an expert report as required in terms of the order of the trial court dated 4.4.2011 which has been reproduced above and which order is final as it has never been set aside by any higher court.

8. In view of the above, respondents/defendants are unnecessarily harassing the petitioners/plaintiffs and therefore this petition is allowed with costs of Rs.20,000/- which shall be paid by the respondents/defendants to the petitioners/plaintiffs

within a period of six weeks from today. Petition is allowed and disposed of accordingly in terms of the aforesaid observations. NOVEMBER03 2014 ib CM(M) 1080/2013

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