

Vinod Kumar Vs. Santi Devi and ors.

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Court : Madhya Pradesh

Decided On : Jan-28-1985

Reported in : AIR1986MP19; 1986MPLJ684

Judge : Ram Pal Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 11, Rule 12

Appeal No. : Civil Revn. No. 1003 of 1983

Appellant : Vinod Kumar

Respondent : Santi Devi and ors.

Advocate for Def. : J.P. Sharma, Adv.

Advocate for Pet/Ap. : N.C. Jain, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Ram Pal Singh, J.

1. Plaintiff-non-applicant Keshardevi has died and her legal representatives have been brought on record.

2. The applicant defendant has preferred this revision against the order of the Fourth Civil Judge Class II, Gwalior, Shir H. C. Sharma, d/- 7-9-1983.

3. The plaintiff filed a suit in the Court of Civil Judge, Class II, Gwalior, under Section 12(1)(a) M. P. Accommodation Control Act, 1961 (hereinafter referred to as the Act) for recovery of arrears of rent and under Section 12(1)(e) of the Act for getting the premises vacated for personal requirement. The defendant without filing the written-statement, filed an application under Order 11 Rule 12, Civil P.C., praying therein that the plaintiff be directed to make discovery of documents on oath, which are in her possession or power regarding all the matters in question therein.

4. The trial Court on receipt of this application ordered that before he is pleased to pass orders on the said application, the defendant should file the written-statement. In consequence, on 13-4-1983, the defendant filed his written-statement. It is then that the Court passed this impugned order rejecting the application of the defendant-petitioner. Aggrieved by this order, the petitioner has invoked revisional jurisdiction of this Court.

5. The object of the provision contained in Order 11, Rule 12 of the Code is two-fold :

(a) to secure as far as possible, that all material documents are disclosed by putting the opposite party on oath as to the documents in his possession or power with the consequent penalties attaching to a false oath, and

(b) to put an end to what might otherwise lead to a protracted inquiry as to the material documents actually in the possession or under the control of the opposite party.

But this rule does not alter the principles relating to the production of the document but gives the Court a discretion to refuse the discovery of documents, when there is no reasonable prospect of its being of any use or to limit the nature and extent of the discovery.

6. The plaintiff has sought the eviction from the suit accommodation on the ground that her son Pawan Kumar, who is major, needs it to start business of grocery. It is upon this, that the defendant filed the said application and challenged that the plaintiff has no son of this name. This fact was also mentioned in the written-statement filed by the defendant. After the impugned order was passed, from the record, it is apparent, that the plaintiff filed a deed of adoption by which this Pawan Kumar was adopted by the plaintiff. This application was filed under the provisions of Order 13, Rule 2 of the Code. Ordinarily, as the law desires all the documents upon which the plaintiff relies upon should have been produced along with the plaint. But this established procedure was not adopted by the plaintiff. On the other hand, when the fact was challenged by the defendant, then and only then he filed the deed of adoption with an application under Order 13, Rule 2 of the Code.

7. No doubt, the Court has power either to refuse or admit the application and in exercising its discretion it is guided by the pleadings and the nature of the action. The party, who applies must, where there is contest, show that he has a good cause of action and that the documents are relevant to the case. Had the plaintiff filed the deed of adoption, there would have been no necessity of this application by the defendant. Furthermore, in the light of the fact that the defendant has submitted that the plaintiff is a landlord of about 20 premises, he wanted to get produced all the material documents connected with her business, as a landlord. From the impugned order, it is apparent that the trial Court has not taken the prayer seriously as it was required to do so. The discretion vested in the Courts must be exercised judicially to further the primary object of these rules and care must be taken that they are not used with an ulterior motive. Where from the pleadings it is obvious that the decision of the matter would depend to a very large extent upon the documentary evidence, the case is essentially one in which recourse should be taken to the provisions of this Order and the Court should not refuse the application of the parties for discovery of all documents. In fact, in such cases even in the absence of an application to this effect by either of the parties, the trial Court should himself record the requisite orders, but the exercise of the judicial discretion has been taken very lightly by the Court and hence the impugned order cannot be permitted to stand.

8. In the result the revision is allowed, The impugned order is set aside, the matter is sent back to the trial Court for passing appropriate orders afresh in accordance with law and the procedure prescribed under the provisions of Order 11, Rule 12 of the Code. However, there shall be no order as to costs.

9. Parties are directed to appear before the trial Court on 26-2-1985 for further proceedings. The Registrar is directed to send back the record of the trial Court to it before that date.

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