Laxmi Narayan Vs. Baburam

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Court : Madhya Pradesh

Decided On : Apr-21-1976

Reported in : AIR1977MP191; 1977MPLJ67

Judge : U.N. Bhachawat, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 18, Rule 3

Appeal No. : Civil Revn. No. 157 of 1974

Appellant : Laxmi Narayan

Respondent : Baburam

Advocate for Def. : K.L. Batham, Adv.

Advocate for Pet/Ap. : V.N. Phatak, Adv.

Judgement :
ORDER

U.N. Bhachawat, J.

1. This is defendant's revision directed against the order of the Civil Judge Class II in Civil Original Suit No. 104A/73 dated 12-2-1974.

2. Succinctly put the facts essential for the decision of this revision are these : The plain-tiff-non-applicant has filed a suit for ejectment and recovery of rent against

the applicant wherein various issues have been framed, the burden of proving some of which is on the plaintiff and of some on the defendant. The plaintiff began his evidence and on 12-2-1974 when he closed his evidence, he stated that he was reserving his right to produce evidence in rebuttal on issue Nos. 1(a), 1(b), 4(b) and 5, the onus of proof of which is on the defendant. The trial Court vide the impugned order while reserving plaintiff's right of leading evi-dcPce in rebuttal fixed the case for defendant's evidence.

3. The defendant after closure of his evidence on 5-3-1974 made an application on 23-3-1974 before the Trial Court for reviewing its impugned order dated 12-2-1974 whereby the plaintiff was allowed to reserve his right of rebuttal as aforesaid and for setting aside that order. That application is yet pending for decision and in the meanwhile this revision has been filed.

4. The argument of the learned counsel for the applicant was two-fold; firstly that the stage for reservation was when the plaintiff began his evidence, and secondly that when the plaintiff had, in fact, led evidence on all the issues including those the burden of which is on the defendant, under the garb of rebuttal plaintiff will have an opportunity to fill in the lacuna left in his evidence. It was also argued by the learned counsel that the impugned order was passed without having afforded the defendant an opportunity of hearing him on this question.

5. As regards the last contention, it is mentioned to be rejected. Had this been a fact, this being an important ground for the review of the order, would have been mentioned in the fore-referred application dated 23-3-1974 of the applicant. Further in that application, it is mentioned that the impugned order was passed despite his objection which indicates that parties were heard.

6. While contesting the other fore-referred argument of the learned counsel for the defendant, the learned counsel for the plaintiff contended that there is no stage prescribed in Order 18. Rule 3. C. P. C. for reservation. Tt could be reserved by the plaintiff before the defendant had begun his evidence and that the plaintiff, in fact, did not lead any evidence on issues of which the onus of proof is on the defendant.

7. The question of stage at which the party beginning is required to state about the reservation of his rebuttal evidence involves interpretation of Order 18, Rule 3, C. P. C. which reads as under :--

'R. 3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then rely especially on the evidence so produced by the party beginning; but the party beginning will then be entitled to rely generally on the whole case.'

The expression of significant relevance in the fore-quoted provision is 'may in its option, either produce his evidence on those issues or reserve it.' This gives the party beginning a right to elect one out of the two courses open to him and to proceed according to that elected course. The following of a particular course is preceded by the act of electing that course. A man has to elect which way he has to go only when he is standing at the crossroad. So that is the point at which he has to elect. The upshot of this discussion is that the stage of election is preceded by the leading of evidence the natural consequence whereof is that the intimation of that election to the Court should also be at that stage, otherwise there is no meaning in it. The object behind intimation is that the other party must know it, so that he may have a fair opportunity to plan his evidence accordingly and cross-examination of opposite party's witnesses is one in that planning. The basic object of the rules of procedure is that each party must have a fair notice of the case of the other side and a fair opportunity of meeting it. If the intimation is to be given after the closure of the evidence of the party beginning, the very fore-observed purpose of the intimation would be frustrated and the other party is likely to he prejudiced.

8. Thus, in the light of the foregoing discussion, in my opinion the stage when the party beginning the evidence has to apprise the Court of his election to reserve his rebuttal evidence is when he begins. In Civil Revn. No. 129 of 1968 decided on

23-10-1970 (Madh Pra) it has been held:--

'The party beginning must elect at the time of beginning whether it will produce evidence on all the issues, or only on those the burden of proving which rests on him and the reservation is allowed when the other party has closed his evidence.'

Some of the High Courts viz. in ATR 1971 Mys 17; AIR 1970 Raj 278; AIR 1969 Andh Pra 82, have taken a different view. The aforesaid decision of this Court is not reported. It is, therefore, likely that the non-applicant labouring under a wrong impression about the stage might have declared the election at the close of his evidence before the beginning of the evidence of the applicant. But the trial Court ought to have examined whether the plaintiff had not led evidence on issues, the burden of proving which was on the defendant before passing the impugned order. It does not appear from the impugned order that the trial Court did apply its mind to that aspect.

9. The rules of procedure are the handmaid of the administration of justice and, therefore, in the interest of justice in the light of the circumstances of this case the plaintiff despite the fact that he did not intimate about his election at the stage of beginning of his evidence be permitted to lead evidence in rebuttal, but at least it should be ascertained whether he, in fact, reserved that evidence and did not lead his evidence on the issues in question.

10. In the light of the foregoing discussion I am of the view that this revision should be allowed and it is accordingly allowed. The impugned order is set aside. The trial Court is directed to hear the parties and after considering the matter from the aspect whether the plaintiff had in fact led evidence on issues mentioned in para 2 above or not, decide the question of permitting the plaintiff to lead evidence in rebuttal of these issues. I make no order as to costs in the circumstances of the case.