

Rang Lal Vs. Smt. Sheela Devi and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-16-2015

Appellant : Rang Lal

Respondent : Smt. Sheela Devi and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL WRIT PETITION No.11046/2015 Ranglal Vs Smt.Sheela Devi & ORS.Date of Order :: 16th December 2015 PRESENT HON'BLE MR.JUSTICE P.K.LOHRA Mr.Muktesh Maheshwari for the petitioner Mr.Shambhoo Singh for the respondent No.1.

BY THE COURT: Petitioner-plaintiff has laid this writ petition under Articles 226 & 227 of the Constitution to assail the impugned order dated 26.08.2015 (Annex.6) passed by the Civil Judge, Mavali, Udaipur (for short the learned court below) and for issuing necessary direction to the learned court below to take certified copies of the documents (Annex.7) on record with consequential relief.

The facts apposite for the purpose of this writ petition are that the petitioner-plaintiff filed a suit for perpetual injunction inter alia on the ground that he owns a plot measuring 30 x 45 ft.

at Tehsil Mavali District Udaipur for which patta was issued by Gram Panchayat, Mavali on 16.12.1996.

It is averred in the plaint that since issuance of patta, the petitioner is in possession of the disputed plot.

For seeking relief of perpetual injunction, the petitioner has pleaded in the plaint that respondent-defendant No.1 has 2 threatened him to sell the disputed plot and she is also making overt acts to interfere with his possession.

The proceedings in the suit are continuing since 2006.

At earlier point of time, during pendency of the suit, the petitioner made endeavour to crave leave of the learned court below for allowing him to produce certified documents in the form of secondary evidence.

The documents sought to be placed on record were xerox copy and, therefore, the learned court below by its order dated 27.03.2014 rejected the application of the petitioner under Section 65 of the Indian Evidence Act, 1872 (for short the Act of 1872). Later on, the petitioner- plaintiff tendered his affidavit in evidence and alongwith affidavit, some documents were also annexed and those documents were marked exhibits.

Taking exception to marking exhibits on the documents annexed with the affidavit, the respondent-defendant submitted an application under Section 151 CPC before the learned court below by urging that these documents are not admissible in evidence.

The respondent placed reliance on Section 74 of the Act of 1872 by asserting that these documents are not public documents.

The precise objection of the respondent was that these documents are not certified copies but the copies obtained by the petitioner under Right to Information Act and notarised by the Notary Public.

Therefore, these documents cannot be admitted in evidence even as secondary evidence.

Sustaining the objection of the respondent, the learned 3 court below by order dated 30.07.2015 directed the petitioner-plaintiff to place on record certified copies of these documents.

Although latitude was given to the petitioner to place on record certified copies of the documents but the learned court below put a word of caution that required certified copies be placed on record at the earliest as the case is among the oldest cases of the court.

On the next date of hearing, the petitioner made endeavour to apprise the learned court below that he has not been able to obtain certified copies of the documents, therefore, some breathing time may be allowed for producing certified copies of the documents.

After considering the objection of the respondent, the learned court below by the order impugned declined the prayer of the petitioner and closed its evidence.

It is in that background, the petitioner has invoked supervisory jurisdiction of this Court.

In the writ petition, the petitioner has averred that after passing of the impugned order, he has been able to obtain certified copies of the documents and the documents are also sought to be placed on record as Annex.7.

For challenging the impugned order, essentially, the petitioner has relied on the earlier order passed by the learned court below dated 30.07.2015 (Annex.4) whereby he was permitted to produce certified copies of the documents.

The petitioner has also contended in the writ petition that after passing of the order, sincere efforts were made by the petitioner for obtaining 4 certified copies of the documents but it took some time in locating the documents and has occasioned delay for obtaining certified copies.

With all these positive assertions, the petitioner has prayed for exercising supervisory jurisdiction to do substantial justice in the matter.

On behalf of the respondent No.1, reply to the writ petition is submitted wherein all the facts averred in the writ petition are refuted.

In the return, the respondent has pleaded that petitioner has unnecessarily prolonged the suit which is pending since 2006 and, therefore, no interference with the impugned order is called for and the documents (Annex.7) are not liable to be taken on record.

I have heard learned counsel for the parties and perused the materials available on record.

The suit for perpetual injunction was filed by the petitioner at the threshold in the year 2006 and, therefore, obviously the concern of the learned court below to decide it with promptitude is appreciable, however, for deciding a matter expeditiously, the court was also expected to see that no injustice is caused to any party to the litigation.

Moreover, if the learned court below has granted liberty to the petitioner to produce certified copies of the documents then in such circumstances, a breathing time to procure and produce the certified copies of the documents ought to have been allowed to him.

Well it is true that suit is pending since 2006 but the 5 issues were framed as late as on 09.01.2013 and thereafter the learned court below by its order dated 30.07.2015 (Annex.4) has directed the petitioner to produce certified copies of the documents.

From the date of the order (Annex.4) till the impugned order was passed by the learned court below, hardly a month has passed and, therefore, in the considered opinion of this Court, closing evidence of the petitioner has occasioned failure of justice which requires interference in exercise of supervisory jurisdiction of this Court.

It is also pertinent to note that the petitioner has obtained certified copies immediately after passing of the impugned order and the same have also been placed on record and, therefore, the Court feels that some latitude is required to

be given to the petitioner to produce the certified copies of the documents.

However, taking into account the stiff opposition of the respondent No.1 and some slackness on the part of the petitioner-plaintiff, it is desirable to impose exemplary costs on the petitioner for compensating the respondent No.1.

Taking into account the nature of the suit and the alleged culpability of the petitioner in prolonging the matter, the impugned order dated 26.08.2015 (Annex.6) passed by the learned court below is quashed and set aside subject to payment of costs of Rs.4,000/- (four thousand).The petitioner shall pay costs of Rs.4,000/- to the respondent No.1.

The learned court below is required to take on record 6 the documents and permit the petitioner to mark exhibits on the same.

It is made clear that requisite amount of costs be paid by the petitioner to the respondent No.1 at the earliest and the learned court below would give effect to this order after recording its satisfaction about the receipt of costs by the respondent No.1.

It is needless to emphasis here that learned court below may proceed with the trial of the case as expeditiously as possible and decide the same at the earliest.

The petition stands allowed as indicated above.

(P.K.LOHRA),J.

MK

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