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Suresh Kumar Vs. Baldev Raj

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Court : Delhi

Decided On : May-24-1984

Reported in : AIR1984Delhi439; 26(1984)DLT213; 1984(7)DRJ101; 1984RLR631

Judge : J.D. Jain, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 18, Rule 17

Appeal No. : Civil Revision Appeal No. 187 of 1984

Appellant : Suresh Kumar

Respondent : Baldev Raj

Advocate for Pet/Ap. : K.K. Chaudhry and; S.S. Sabharwal, Advs

Judgement :

J.D. Jain, J.

(1) This revision petition is directed against order dated 4th January, 1984 of an Additional Rent Controller rejecting the application of the petitioner dated 25th August 1983 made under Order Xvii Rule 1 read with Order Xvii Rules 3, 17 & 17A read with Section 151 of the Code of Civil Procedure (for short the Code) for recalling a witness to prove certain documents.

(2) The facts germane to the decision of this revision petition succinctly are that the petitioner filed an application for eviction of the respondent-tenant from the premises in question viz., portion of property No. C-11/ 146, Lajpat Nagar, New Delhi, which is a Govt. built property. His contention was that he was a co-owner/landlord of the premises in question being one of the legal representatives of his mother, Smt. Parvati who was the owner of the said property under a conveyance and a lease-deed executed by the President of India in her favor. He filed photostat copies of the certified copies of the lease-deed and the conveyance deed Along with the application. These documents were marked 'B' & 'C' when he tendered the same in evidence during the course of his own examination as Aw 4. He also examined Shri Jang Bahadur Singh, a U.D.C. in the office of the Land & Development Office, as Aw 2 to prove that the property in question belonged to Smt. Parvati and that an application for mutation had been made by her legal heirs which was pending at that time. This witness was examined on 20th October 1982. It would, however, appear that the photostat copies marked 'B' & 'C' were somehow not put to this witness although he was generally examined with respect to the title of Smt. Parvati to the property in question. During cross-examination the learned counsel for the respondent elicited same information from him which was based on a couple of letters. A direction was made by the Court to the witness to file photostat copies of those letters and the same were then to be exhibited as RWx 1 and RWx 2. However, it would appear that the witness went away without furnishing photostat copies of the two documents. When the petitioner stepped into witness-box himself, he deposed that he had received a communication dated 1st March 1983 from the Land & Development Office stating that the mutation of succession had since been sanctioned in their favor and he filed a photostat copy thereof which was marked 'A'. It was allowed to be tendered subject to payment of costs but the costs were not accepted by learned counsel for the respondent.

(3) After the close of evidence by both the parties, the matter came up for hearing of arguments before the trial Court. Wisdom then downed on the petitioner that he had not filed the original documents and the photostat copies filed by him were not admissible as secondary evidence. So,Realizing this lapse on his part he moved the afore said application for recalling Aw 2 to prove the documents marked 'A', 'B', & 'C' and also to supply photostat copies of the documents which were to be

exhibited as RWx 1 and RWx 2.

(4) The application was opposed by the respondent tooth and nail on the ground that the petitioner was well aware of the existence of these documents even when he instituted the eviction petition but he chose to file only photostat copies. Moreover, he failed to get them proved from Aw 2 when he was under examination. So, he opposed the prayer for recalling Aw 2 although he had no objection to photostat copies of letters to be exhibited as RWx 1 and RWx 2 being placed on the record. His primary objection was that giving an opportunity to the petitioner to recall the witness would be tantamount to filling up the lacuna in evidence and he would be highly prejudiced thereby. This argument found favor with the learned trial Court and his application for recalling the witness to prove the aforesaid documents was dismissed. It may also be mentioned here that the petitioner had placed certified copies of the conveyance deed and lease-deed which had been obtained by him as far back as 1981 and also the original letter dated 1st March 1983 received from the Land & Development Officer, Along with his aforesaid application.

(5) I have heard the learned counsel for the parties at length. Order xviii Rule 17 runs as under: 104 'The Court may at any stage of the suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.' On a plain reading of this provision it is obvious that discretion vests in the Court to recall a witness who has been examined earlier at any stage of the suit which would evidently mean any stage before the judgment is pronounced. So, the discretion vesting in the Court under this Rule can be exercised even after evidence of the parties has concluded, of course, it mist be exercised judicially and on well accepted judicial principles and not arbitrarily or capriciously. The question which falls for consideration, thereforee, is whether the circumstances of this case warrant that the discretion should have been exercised in favor of the petitioner or not.

(6) As stated above, the photostat copies of all the documents excepting Ex. RWx 1 & RWx 2 had been filed by the petitioner. Somehow or the other it did not occur to him that he ought to file the original documents or at least certified copies of the

conveyance deed and the lease-deed which alone could constitute legally admissible secondary evidence. As for the other two documents they were to be produced by Aw 2 at the instance of the respondent himself. The original letter of the Land & Development Officer dated 1st March 1983 ought to have been produced when Aw 4 was in .the witness-box but he withheld the same due to inadvertence or otherwise. The argument of the learned counsel for the petitioner precisely is that documents marked 'A', 'B' &-'C' have to be proved by the concerned official of the Land & Development Office, viz., Aw 2, and, thereforee, it has become necessary to recall him. There is no doubt that the petitioner has been indiscreet in this respect but having regard to the fact that these documents have all along been on the record and that the respondent was fully aware of the same it cannot be said by any stretch of reasoning that instant is a case of filling up the lacuna. At best, it is a case of rectifying an omission which was somehow allowed to persist. It will not fling any surprise on the opposite side.

(7) The learned counsel for the respondent has adverted to a couple of reported decisions, viz , T. Ramachandra Murthy v. K. Rama Murthy and others Air 1980 AP 265 and Altaf Hussain v. Nasreen Zahra, : AIR1978 All515 , in support of his contention that the power vesting under Rule 17 cannot be exercised so as to enable a party to fill up the lacuna in evidence. In the former case, there is no doubt, an observation to this effect. In the said case an application for recalling a witness was made after the judgment had been reserved. The learned Judge, thereforee, observed that 'the jurisdiction of the Court was sought to be invoked for recalling the witness at the time when the hearing of the case was over'. With great respect I do not agree that the stage of the case alone should weigh with the Court to an extent as to over-shadow the other aspects of the matter. As observed by me above and also in Altaf Hussain's case (supra), the power under this rule can be exercised even of the stage of writing a judgment. It bears repetition that the object in the instant case is not to fill up the lacuna by adducing any fresh evidence but it is only to bring the proper admissible evidence on record which was somehow left out and instead photostat copies had been filed.

(8) In the second case, it was observed by a learned Judge of Allahabad High Court that the power under Rule 17 should not be exercised lightly and it should

be used sparingly and in exceptional cases only. I am in respectful agreement with this view and I feel that the instant is a case in which the interests of justice demand that the petitioner should be permitted to bring proper documents on the record rather than be punished for certain lapses on his part which may well be attributed to inadvertence or lack of proper advice. Certainly the respondent can be compensated by awarding costs and also by affording an opportunity to adduce any evidence in rebuttal, if he so wishes.

(9) Under the circumstances, I allow this petition, set aside the impugned order and direct the trial Court to recall Aw 2 and allow the documents mentioned in the aforesaid application to be proved in accordance with law. It shall be, however, subject to payment of Rs. 200.00 as costs and the respondent shall also have opportunity to adduce evidence in rebuttal, if any.

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