

Narendra Kumar Vs. Smt. Brahma Devi Through Her Lrs.

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Court : Rajasthan

Decided On : Sep-18-2000

Reported in : 2001(1)WLN251

Judge : J.C. Verma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 16, Rules 1, 5 and 7-A

Appeal No. : S.B. Civil Revision Petition No. 864 of 2000

Appellant : Narendra Kumar

Respondent : Smt. Brahma Devi Through Her Lrs.

Advocate for Def. : Rajesh Kapoor, Adv.

Advocate for Pet/Ap. : Resham Bhargava, Adv.

Judgement :

ORDER

VERMA, J.

1. The present revision petition has been preferred against the order dated 26.4.2000 passed by Civil Judge (Jr. Dn.) Ajmer (West) in civil suit No. 320/82 by which order the trial court rejected the application of plaintiff filed under Order 16 Rule 5, 7 & 7A CPC.

(2). The plaintiff was allowed an amendment in the plaint by adding para No. 6A and on 28.9.99 the issues No. 4B was framed, as stated by petitioner, to the effect that whether the disputed property is a commercial establishment and whether during life time of respondent her heirs were not doing the business in the premises in question. An application was moved by plaintiff to summon certain witnesses, which was opposed on the ground that at the time of death of respondent the plaintiff was still leading evidence and had closed it subsequently. It was further argued that the petitioner had not included the said witnesses in the list of witnesses, submitted by him, therefore, at this stage the petitioner cannot be allowed to summon the witnesses. It was observed by the trial court that at the time of making the application for amendment and framing of the issue, no reason has been shown as to why the name of witnesses, now being summoned, was not mentioned in the application. Therefore, the petitioner was not allowed to summon the witnesses.

(3). It is stated that the plaintiff is still leading evidence, in such circumstances no prejudice could have been caused to respondent, if the petitioner is allowed to summon the witnesses.

(4). After hearing counsel for parties, I am of the opinion that after framing of additional issue 4-B, the petitioner should have been allowed to examine the witnesses as requested in the application. The petitioner had desired to summon the officer/employer of RSEB; Manager, Bank of Baroda; Manager, Urban Cooperative Bank; and the Manager, New India Insurance Company to establish the fact that the husband and sons of respondent were carrying their business separately or with respondent in the premises in question.

(5). Counsel for petitioner relies on the judgment in case of Satnam Transport Company & another vs. Prakash Mal Surana (1), wherein it was held that the provisions of Order 16 Rule 1 and 1A are to be interpreted liberally and the evidence is not to be shut unless parties are grossly negligent, It was further observed that non filing of the list of witnesses or omission to mention names of witnesses does not deprive the court of its power to examine witness.

(6). Reliance has also been placed on the judgment in case of Smt. Koka Devi vs. Smt. Sarjoo Devi (2), wherein it was held that a party cannot be debarred from producing the witness because list of witnesses not accepted on technical ground of delay. Similar observation was made in case of Achutananda Sahoo vs. Dhruba Ch. Sahoo and others (3). This court in case of Champa Lal Jhanwar vs. Rajkaran & Ors., (4), has held that for imparting substantial justice the witness and record be called.

(7), The petitioner has challenged the order immediately. On issuance of notice the counsel for the respondent has appeared. After hearing the parties, it shall be appropriate in the instant case that the trial court be directed to render court assistance to summon the official witnesses with the record without any further delay. The respondents shall also be allowed to produce evidence in rebuttal, if so desired. The counsel for petitioner submits that if the court assistance is given to summon the witnesses, he would serve the witnesses on his own responsibility.

(8). For the reasons mentioned above, the impugned order dated 26.4.2000 is set aside. The trial court is directed to provide court assistance to summon the witnesses. The efforts shall be made to conclude the case within three months, from the date of filing certified copy of this order before the trial court.

(9). With the above observations, the revision petition is allowed.