

Munshi Vs. Tejvir

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Court : Rajasthan

Decided On : Jul-19-2005

Reported in : RLW2005(4)Raj2367; 2005(4)WLC682

Judge : K.S. Rathore, J.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 26, Rule 9;
[Constitution of India](#) - Article 227

Appeal No. : S.B. Civil Writ Petition No. 8782 of 2004

Appellant : Munshi

Respondent : Tejvir

Advocate for Pet/Ap. : S.C. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

K.S. Rathore, J.

1. Heard learned Counsel for the petitioner at admission stage and perused the impugned order dated 2.12.2004 whereby the Trial Court rejected the application under Order 26 Rule 9 read with 151 CPC filed by the petitioner.

2. The petitioner has moved the application with the view to get the Commissioner appointed to ascertain the fact whether any construction has been demolished on the disputed plot in question or not.

3. Learned counsel for the petitioner referred Order 26 Rule 9 which deals with Commission to make local investigations-In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

4. It is given out that the petitioner filed a suit for damages, therefore, the fact was necessary to be verified whether the construction has been demolished or not. In support of his submissions, learned Counsel placed reliance on the judgment rendered by Hon'ble Supreme Court in case of Praga Tools Corporation Ltd. v. Mohboobunnissa Begum (Smt.) and Ors. reported in : AIR 2001 SC2361 wherein the Hon'ble Supreme Court has observed that 'the Trial Court may have appointed a Commissioner to carry out survey but ultimately findings have to be recorded by the Trial Court itself-Report of Commissioner can only be an aid to the Trial Court in arriving at its findings.'

5. In case of Lekh Raj v. Muni Lal and Ors. reported in 2001 (2) SCC 762, the Hon'ble Supreme Court has held that 'Local Commissioner could only report the facts as to the existing condition of the disputed shop building, not how it came to be in such condition. As to the question whether damage had been deliberately caused, party so alleging would have to lead evidence.'

6. In the instant case, the Trial Court has observed that almost evidences of plaintiff and defendant except one evidence of defendant has been completed and at this stage, the application under Order 26 Rule 9 read with Section 151 CPC has been moved on behalf of the petitioner-plaintiff to create evidence.

7. In case of Praga Tools Corp. Ltd. (supra), the State of Andhra Pradesh has filed objections to the findings of the Trial Court. On behalf of the appellants and the

State of Andhra Pradesh it was submitted that the Trial Court could not have discarded the findings of the Court Commissioner. It was submitted that as per the orders of this Court, it was only this Court which could hear objections on the report of the Commissioner. The Hon'ble Supreme Court observed as under:

'We see no substance in this submission. This Court had directed the Trial Court to record findings. The Trial Court may have appointed a Commissioner to carry out survey but ultimately the findings had to be recorded by the Trial Court. The report of the Commissioner could only be an aid to the Trial Court in arriving at its findings. The Trial Court has allowed parties to lead oral as well as documentary evidence. The Trial Court has complied with the directions of this Court.'

8. In view of the ratio decided by Hon'ble Supreme Court, the Trial Court has rightly rejected the application under Order 26 Rule 9. As the Trial Court did not think it proper to appoint the commissioner because oral as well as documentary evidence was sufficient to resolve the dispute.

9. As discussed hereinabove, I do not find any error or illegality in the impugned order dated 2.12.2004 and while exercising revisionary power under Article 227 of the Constitution, no case for any interference is made out. The writ petition fails and herewith dismissed.