

Devi Lal and ors. Vs. Gurjeet Kaur and ors.

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Court : Rajasthan

Decided On : Aug-03-2004

Reported in : RLW2004(4)Raj2739; 2004(4)WLC622

Judge : Sunil Kumar Garg, J.

Acts : Code of Civil Procedure (CPC) - Sections 115

Appeal No. : S.B. Civil Revision Petition No. 317 of 2000

Appellant : Devi Lal and ors.

Respondent : Gurjeet Kaur and ors.

Advocate for Def. : R.K. Bohra, Adv. for; N.L. Joshi, Adv.

Advocate for Pet/Ap. : Vijay Agarwal, Adv.

Disposition : Revision allowed

Judgement :

Sunil Kumar Garg, J.

1. This revision petition under Section 115 C.P.C. has been filed by the petitioners - plaintiffs against the order dtd. 5.5.2000 passed by the learned Additional Civil Judge (Senior Division), Hanumangarh in Civil Suit No. 12/1998 by which the application filed by the plaintiff - petitioner for re- opening the evidence was

rejected and affirmed the order dtd. 15.10.99 by which evidence of the petitioners - plaintiffs was closed.

2. It may be stated that in this case, the plaintiffs - petitioners filed a suit for specific performance and in that suit, written statement was filed on behalf of the respondents - defendants on 17.4.1994 and issues were framed on 29.7.1995 and thereafter the case was lingering on for recording the evidence of the plaintiffs - petitioners and due to some reasons, the evidence was not produced by the plaintiffs - petitioners and the learned Trial Court through order dtd. 15.10.99 closed the evidence of the plaintiffs - petitioners. Thereafter the petitioners - plaintiffs submitted an application for re-opening of their evidence, but the learned Additional Civil Judge vide order dtd. 5.5.2000 rejected the application filed by the petitioners - plaintiffs and against the order dtd. 5.5.2000 and 15.10.99, the petitioners - plaintiffs have filed the present revision petition.

3. It has been submitted by the learned counsel for the petitioners - plaintiffs that atleast one more chance be given to them so that they can lead their evidence.

4. On the other hand, the learned counsel for the respondents - defendants have supported the findings recorded by the learned Trial Court in the impugned order dtd. 5.5.2000 and has submitted that the same do not require any interference by this Court.

5. Heard and perused the case file.

6. In such matter, no doubt there was delay on the part of the plaintiffs - petitioners, but still I am of the view that a little more sensitive approach is required to be adopted by the Courts in process of dispensation of justice. It is not at all desirable to drive out a party out of Court by way of punishment for whatever reason.

7. I may remind an age old well established principle that every court has inherent power to act ex debito justitiae to do real and substantial justice for which it exists. It has always been anxiety of the Court to decide an issue on merit instead of driving out a party from the court for one or the other technical reason.

8. Even if parties is found guilty, the matter could have been restored on payment of cost. The Apex Court in Collector Land Acquisition v. Mst. Katiji and Ors. (1), has observed, thus :

'It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical ground but it is capable of removing injustice and is expected to do so.'

9. Recently, the Apex Court in Rohit Singhal v. Principal (2), dealing with the question of discipline has observed that efforts must be made to salvage the situation in order to secure ends of justice.

10. Thus, I am of the view that one more chance should be allowed to the petitioners - plaintiffs to lead the evidence.

11. For the reasons mentioned above, this revision petition deserves to be allowed and orders dtd. 5.5.2000 and 15.10.99 passed by the learned Additional Civil Judge are liable to be quashed and set aside.

Accordingly, the present revision petition is allowed and the orders dtd. 5.5.2000 and 16.10.99 passed by the learned Additional Civil Judge (Sr. Division), Hanumangarh are set aside at the cost of Rs. 1000/- payable to the defendants - respondents. The parties are directed to appear before the learned Additional Civil Judge (Sr. Division), Hanumangarh on 6.9.2004 and the learned Additional Civil Judge (Sr. Division) Hanumangarh is directed to record the evidence produced by the plaintiffs - petitioners. It is made clear that the witnesses shall be produced by the plaintiffs - petitioners themselves and for that Court's assistance would not be taken.