

Baldev Sharma Vs. Raj Devi

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Court : Rajasthan

Decided On : Oct-13-1997

Reported in : 1998(1)WLC400; 1997(2)WLN510

Judge : Shiv Kumar Sharma, J.

Appeal No. : S.B. Civil Revision No. 1469 of 1996

Appellant : Baldev Sharma

Respondent : Raj Devi

Advocate for Pet/Ap. : Mr. R.K. Agarwal

Disposition : Petition dismissed

Judgement :

Shiv Kumar Sharma, J.

1. Instant revision impugns the order dated August 30, 1996 of the learned Additional District Judge No. 2 Jaipur City whereby the learned judge refused to implead the petitioner in the appeal being the legal representative of appellant S.D. Sharma who passed away during the pendency of the said appeal.

2. Suit for eviction in respect of rented premises was decreed by the learned trial court in favour of plaintiff non-petitioner (for short the landlord) and against Shri

S.D. Sharma. An appeal was filed by Shri S.D. Sharma against the decree of the trial court. During the pendency of the appeal Shri S.D. Sharma expired. Application was filed by Smt. Janak Rani wife of late Shri S.D. Sharma and by the petitioner for impleading them as appellants in the appeal. Learned appellate court impleaded Smt. Janak Rani as appellant but ordered enquiry under Order 22 Rule 5 CPC in respect of averments of the petitioner, according to which the petitioner claimed himself as an adopted son of Shri S.D. Sharma. The petitioner examined himself and Janak Rani and exhibited some relevant documents. No evidence was produced by the land lord. The learned appellate court therefore, refused to implead the petitioner and dismissed his application.

3. Mr. R.K. Agarwal, learned Counsel for the petitioner canvassed that the petitioner produced oral as well as documentary evidence and the court below ought to have believed the uncontroverted evidence but it miserably failed in making distinction between concept of legal representative and legal heir. Mr. Agarwal, learned Counsel placed reliance on Santosh v. Kailash and Anr. RLW 1996(3) Raj. 538. Sandra Rajali v. Gopala : AIR1934 Mad100 , Kalu Ram v. Charon Singh , Mohindra Kaur v. Piara Singh Mithu Lal v. State of M.P. : 1975 CriLJ236 .

4. I have carefully scanned the arguments as well as the authorities cited before me. According to Section 2(11) of the C.P.C. even an intermiddler with the estate of deceased can be a legal representative for the purpose of the pending proceedings before the court. In Kalu Ram v. Charana Singh this Court (Hon'ble Rajesh Balia, J.) indicated in para 6 thus:

In view of this settled position of law, it must be held that enquiry into right to heirship is not the determining factor in deciding whether a person is or is not a legal representative for the purpose of proceedings before the court, what is required to be considered to whether the person claiming to represent the estate of the deceased for the purpose, of lis has significant interest in carrying on litigation and is not any imposter.

5. I have been taken through the copies of power of attorneys executed by late Shri S.D. Sharma and his wife Smt. Janak Rani in favour of the petitioner Baldev

Sharma. These documents are part of the record before the learned court below. Both these documents were executed on Feb. 28, 1994 and Jan. 11, 1995 respectively. A look at these documents reveals that petitioner Baldev has been shown as son of Sat Pal.

6. There is yet another aspect which goes against the petitioner. Late Shri S.D. Sharma during his life time was examined on oath on November 16, 1991. He stated that Baldev was son of Satpal whereas Krishna Kumar was his (S.D. Sharma's) son and was serving in Merchant Navy. Smt. Janak Rani was confronted with the statement of late Shri S.D. Sharma.

7. I do not want to express my opinion as to the validity of adoption as it may prejudice the rights of the petitioner but I have to ask a question from myself as to whether a valid adoption of a child can be made by a father whose natural son is already alive I am unable to persuade myself to ignore the provisions contained in Hindu Adoption and Maintenance Act, 1956 and to accept the uncontroverted evidence adduced by the petitioner. Smt. Janak Rani has already been impleaded as legal representative of the deceased S.D. Sharma, for the purpose of carrying on litigation and it is not necessary to implead the petitioner.

8. To my mind the petitioner is not having sufficient interest in carrying on litigation and he cannot be allowed to represent the suit property as legal representative of late Shri S.D. Sharma.

9. I see no jurisdictional error in the impugned order and if the order is allowed to stand it would not occasion failure of justice. The petitioner if so chooses, can file civil suit seeking appropriate relief.

10. Consequently, the revision fails and is hereby dismissed. Costs easy.