

Champalal and ors. Vs. Lunaram and ors.

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Court : Rajasthan

Decided On : Mar-16-2004

Reported in : AIR2005Raj92

Judge : Sunil Kumar Garg, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18, Rule 2

Appeal No. : Civil Writ Petn. No. 323/2004

Appellant : Champalal and ors.

Respondent : Lunaram and ors.

Advocate for Pet/Ap. : Gajendra Maheshwari, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Sunil Kumar Garg, J.

1. Heard at admission stage.

2. The petitioners-defendants have filed the present writ petition under Article 226/ 227 of the Constitution of India on 6-1-2004 against the respondents with a prayer that the order dated 2-5-2001 (Annex. P/1) passed by the learned Civil Judge

(Junior Division), Bikaner by which the learned Civil Judge has closed the evidence of the petitioners-defendants be quashed and set aside.

3. The facts of the case as put forward by the petitioners are as under :

i) That the respondent No. 1 filed a suit against the petitioners and respondent No. 2 for declaration and permanent injunction in the Court of Civil Judge (Junior Division), Barmer (respondent No. 3) on 16-2-2003 bearing Civil Suit No. 55/93.

ii) Further case of the petitioners is that the defendants (petitioners and respondent No. 2) filed written statement in the trial Court on 18-3-1994 and thereafter issues were framed on 23-9-1994 and the case was fixed for recording the evidence of the plaintiff (respondent No. 1) and thereafter on 6-12-2000 i.e. after a period of around six years from the date of framing of issues i.e. 23-9-1994, the plaintiffs evidence was closed and the matter was fixed for recording the evidence of the defendants on 12-1-2001.

iii) Further case of the petitioners is that on 12-1-2001 the Presiding Officer was on leave and thereafter the matter was adjourned to 5-2-2001 and on 5-2-2001, adjournment was sought by the counsel for the defendants and the matter was posted on 20-2-2001.

iv) Further case of the petitioners is that on 20-2-2001, the matter was again adjourned to 8th-3-2001 for recording the evidence, of the defendants and on 8-3-2001, the summons of the witnesses were not received after service on the witnesses and thus, the trial Court ordered for production of all the witnesses at one instance and fixed the next dates as 19-4-2001 and 20-4-2001. The defendants filed process fee and summons for the witnesses within stipulated time on 11-4-2001.

v) Further case of the petitioners is that on 19-4-2001 the defendants' witness Shri Champa Lal was present, however, the statements were not recorded due to paucity of time and thus, the matter was adjourned to 1-5-2001 and on 19-4-2001, the trial Court did not pass any order regarding service of summons on the witnesses or for compelling the presence of the witnesses.

vi) Further case of the petitioner is that on 1 -5-2001, the witnesses were not present in the trial Court and the trial Court ordered to produce all the witnesses on 2-5-2001 and no order was passed for calling the witnesses on whom summons were already served.

vii) Further case of the petitioner is that the trial Court through order dated 2-5-2001 (Annex.-P/1) closed the evidence of the defendants without giving reasonable and adequate opportunity to produce the evidence by the defendants (petitioners and respondent No. 2) and this order dated 2-5-2001 (Annex.-P/1) has been challenged in this writ petition.

2. In this writ petition, the main submission of the learned counsel for the petitioner is that sufficient opportunity to produce the evidence should also have been given to the defendants as when the witnesses were present on 19-4-2001, the trial Court did not record their evidence and similarly on 20-4-2001, the evidence was not recorded, but simply because on 1-5-2001 and 2-5-2001, the witnesses were not produced by the defendants, the evidence of the defendants was closed and thus, there was miscarriage of justice.

3. The notices of the writ petition were issued to the respondents, but none has appeared on their behalf.

4. Heard and perused the record.

5. In my considered opinion, if the defendants-petitioners are not allowed to produce their evidence, the injustice would be done to them and therefore, in the interest of justice, it would be better that one more opportunity should be given to the defendants-petitioners to produce evidence in the trial Court.

6. For the reasons mentioned above, the order dated 2-5-2001 (Annex.-P/1) passed by the learned Civil Judge, Barmer (respondent No. 3) is liable to be quashed and set aside and the writ petition deserves to be allowed.

7. For the reasons mentioned above, the present writ petition is allowed and the order dated 2-5-2001 (Annex.-P/1) passed by the learned Civil Judge, Barmer (respondent No. 3) is quashed and set aside and the defendants-petitioners are

directed to produce their evidence on next two dates i.e. 5-4-2004 and 6-4-2004 and on that the learned Civil Judge, Barmer (respondent No. 3) shall record the statements of all the witnesses produced by the defendants-petitioners. It is made clear that it would be the duty of the defendants-petitioners to produce the evidence themselves, but for that if they want help through summons, they can take the same, but if summons are not served on the witnesses, on the ground no further adjournment would be granted by the learned Civil Judge, Barmer.

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