

**Ramdas Vs. Additional District Judge (Fast Track) No. 3 and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/769780](http://sooperkanoon.com/769780)

**Court :** Rajasthan

**Decided On :** Aug-11-2009

**Reported in :** 2009(3)WLN543

**Judge :** Dalip Singh, J.

**Appellant :** Ramdas

**Respondent :** Additional District Judge (Fast Track) No. 3 and ors.

**Disposition :** Petition dismissed

**Judgement :**

**Dalip Singh, J.**

1. Heard learned Counsel for the parties.
2. In the present writ petition bearing No. 6242/2009, filed on 18.05.2009, the plaintiff-petitioner has challenged the impugned order dt. 07.03.2009, whereby the learned trial Court allowed the application submitted by the defendant Nos. 1 to 5 for permitting the defendant No. 1 to appear and lead evidence.
3. The back-ground in which this petition came to be filed, as would be seen from the earlier order-sheet dt. 29.05.2009 recorded by this Court is that vide order dt. 18.10.2001, which is available on record in the order-sheet supplied by the learned Counsel for the respondents, the defendant Nos. 1 and 2 had submitted before the

learned trial Court that the defendant Nos. 1 and 2 do not wish to lead any evidence. The case was then posted for the evidence of the defendant Nos. 3, 4 and 5.

4. It may be stated here that the suit is one for partition in which the defendant Nos. 1 to 5 have filed a joint written-statements through the same counsel with common pleas raised against the suit filed by the plaintiff.

5. When the case was going-on for the evidence of the defendant Nos. 3, 4 and 5 vide order dt. 12.12.2001 the learned trial Court closed the evidence of the defendant Nos. 3, 4 and 5 also, as none of the witnesses were present nor were defendant Nos. 1 to 5 present nor was their counsel present.

6. Subsequently, an application came to be filed by the defendant No. 3 on 18.01.2002 for reopening the evidence of the defendant, which was allowed by the learned trial Court vide order dt. 18.01.2002 on costs of Rs. 500/-.

7. The order-sheet dt. 18.01.2002, reads as follows:

f nukad 18-01-2002&

odqyk; i{kdkjku mifLFkrA izfroknh egsUnz dqekj dh rjQ ls kgknr [kksyus ds fy, odhy izfroknh us nj[okLr isk dhA udy nh xb ZA nj[okLr ij lquk x;kA 500@& :i;s gtZs ij nj[okLr Lohdkj dh tkrh g SA okLrs kgknr izfroknh 3] 4 o 5 fnukad 12-02-2002 dks isk gksA

8. On 12.02.2002 the witnesses were not present before the Court and the time was sought.

9. The order-sheet dt. 12.02.2002, reads as follows:

f nukad 12-02-2002&

i{kdkjksa ds vf/kokx.k mifLFkrA izfroknh la[;k 1 ls 5 lk{; gsrq le; pkgrs gSaA vkt izfroknh la[;k 1 ls 5 }kjk 500@& :i;s ds O;; dk Hkqxrku oknh dks fd;k x;kA

vkxkeh fnukad ij izfroknh la;k 1 ls 5 vius lk{khx.k Lo;a izLrqr djsA i=koyh izfroknh la;k 1 ls 5 dh lk{; gsrq fnukad 27-02-2002 dks izLrqr gksA

10. Thereafter, the suit proceeded for the evidence of the defendant in which on 27.02.2002 the statement of DW-1 Mahendra Kumar remained inconclusive and the case proceeded for summoning the documents, which were found relevant by the Court. On 14.02.2003 the Court has recorded that the relevant file and the record have been received and the case was posted for the evidence of the DW-3/1 for 03.03.2003. On 03.03.2003 in the evidence of the defendant No. 3 the affidavit of DW-3/2 and 3/3 were filed and the case was posted on 21.03.2003. Thereafter, the case proceeded for the cross-examination of DW-1 Mahendra Kumar up-to 18.09.2003, but was adjourned to 09.10.2003 on which date an application, which has been filed on 18.09.2003 was taken up and the case was adjourned for reply to the application. Thereafter, the matter continued for the reply to the application.

11. On 16.04.2004 the Court was of the opinion that the parties should approach the learned District Judge for getting the requisition letter from the Court of the learned District Judge and the orders were passed in that behalf awaiting the order of the learned District Judge up-to 29.09.2008 when the case was adjourned to 13.10.2008 for cross-examination of DW-1. On 13.10.2008 also the plaintiff and his counsel were not present, but the case was adjourned for the cross-examination of DW-1 for 25.10.2008. On 25.10.2008 the witness was not present on account of engagement of his daughter and the case was adjourned to 17.11.2008. On 17.11.2008 the case was adjourned, as the counsel for the plaintiff was busy with the function in the family and the case was then fixed on 27.11.2008 for the cross-examination of DW-1. On 27.11.2008 the cross-examination was partly conducted, but the case was adjourned to 01.12.2008 when the cross-examination of DW-1 Mahendra Kumar was completed and the case was fixed for cross-examinations of DW-2 and 3 for 17.12.2008.

12. Thereafter, the case was adjourned on several dates and the cross-examination of the witnesses DW-2 and 3 was completed on 07.02.2009 and the case was fixed for evidence of the defendant on 10.02.2009. Thereafter, on

04.03.2009 the defendant's counsel moved an application for getting the statements of the defendant No. 1 Kanta Devi recorded as well as for filing her affidavit, which was opposed, which application came to be allowed by the learned trial Court vide impugned order dt. 07.03.2009.

13. There are, however, certain subsequent important events, which are required to be mentioned here. After allowing the application on 07.03.2009 the defendant No. 1 filed her affidavit and the plaintiff-petitioner cross-examined her on 15.04.2009 on the said affidavit without having challenged the order dt. 07.03.2009 in any proceedings in a higher forum and the case was posted on 24.04.2009 for the plaintiff's rebuttal evidence on the request of the counsel for the plaintiff.

14. In the meanwhile, the petitioner had even filed a review petition before the learned trial Court against the order dt. 07.03.2009, which came to be dismissed vide order dt. 23.03.2009 and the Writ Petition bearing No. 6665/2009 has been filed challenging the said order on the review petition on 23.05.2009.

15. On 24.04.2009 the plaintiff did not appear for the rebuttal evidence and as such the learned trial Court closed the right of the plaintiff to lead evidence in rebuttal vide order dt. 27.04.2009.

16. On 27.04.2009 when the plaintiff's right to lead evidence in rebuttal was refused, the plaintiff preferred S.B. Civil Writ Petition No. 5468/2009 before this Court against the order dt. 27.04.2009 only without challenging the order dt. 07.03.2009 or 23.03.2009. This petition came to be allowed vide order of this Court dt. 04.05.2009 and the plaintiff-petitioner was allowed to lead evidence on payment of costs vide order 04.05.2009 of this Court. After the order dt. 04.05.2009, the learned trial Court afforded an opportunity to the plaintiff to lead evidence in rebuttal on the payment of costs, which has since been recorded after the costs has been paid.

17. Thereafter these petitions came to be filed before this Court after the order dt. 04.05.2009 on 18.05.2009 and 23.05.2009 challenging the earlier orders dt. 07.03.2009 and 23.03.2009. This Court is of the view that in case the petitioner

was at all aggrieved by the orders dt. 07.03.2009 and 23.03.2009 the petitioner ought to have approached this Court much earlier even before 27.04.2009 and not after this Court had allowed the petition filed by the plaintiff to lead evidence in rebuttal against the order dt. 27.04.2009 passed by the learned trial Court, which was allowed on 04.05.2009.

18. The petitioner did not raise any grievance before this Court in the earlier petition filed by the plaintiff-petitioner against the order dt. 27.04.2009 in respect of the impugned orders dt. 07.03.2009 and 23.07.2009 that the defendant No. 1 had wrongly been allowed to lead the evidence on the application dt. 04.03.2009, which was allowed on 07.03.2009. The petitioner-plaintiff having only raised the grievance with regard to closure of the right of the plaintiff to lead evidence in rebuttal and only after the writ petition was allowed by this Court on 04.05.2009, the petitioner has approached this Court, which clearly is an after thought.

19. This Court would not, therefore, like to interfere in the writ jurisdiction against the order dt. 07.03.2009 and 23.03.2009, as the petitioner-plaintiff had an opportunity to challenge those orders on the earlier occasion and has only approached this Court after nearly two months on 18.05.2009 and 23.05.2009 as well as having cross-examined the defendant No. 1 as DW-8, who was examined on payment of cost and then having requested the learned trial Court for permission to lead evidence in rebuttal on 24.04.2009, which prayer was also allowed. This is, therefore, a conscious case of estoppel against the plaintiff in the facts and circumstances of this case, as the petitioner had consciously waived his right to challenge the impugned order.

20. Accordingly, I find no merits in the writ petitions for interference in the writ jurisdiction.

21. So far as the order dt. 07.03.2009 is concerned, on the merits suffice it to say that the petitioner-plaintiff being aware of the earlier order of the Court dt. 12.02.2002 allowing the defendant Nos. 1 to 5 to lead evidence cannot fall back upon earlier order of the learned trial Court dt. 18.10.2001, as thereafter the defendants, who have filed a joint written-statements, moved an application before the learned trial Court on 18.01.2002 for being permitted to lead evidence, which

was allowed and the defendant Nos. 1 to 5, as per the order dt. 12.02.2002 were allowed to produce the evidence on costs of Rs. 500/-, which has been accepted by the plaintiff and the order dt. 12.02.2002 was also not challenged by the plaintiff.

22. In the facts and circumstances of the present case and looking to the above facts, this Court declines to interfere in the writ jurisdiction under Articles 226 and 227 of the Constitution of India.

23. Consequently, both the writ petitions stand dismissed.

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