

Babu Lal Vs. Nagar Palika

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Court : Rajasthan

Decided On : May-02-2002

Reported in : RLW2003(2)Raj940

Judge : B.S. Chauhan, J.

Acts : Code of Civil Procedure (CPC) - Order 14, Rule 5

Appeal No. : S.B. Civil Revision Petition No. 1042 of 2001

Appellant : Babu Lal

Respondent : Nagar Palika

Advocate for Def. : Pradeep Shah, Adv.

Advocate for Pet/Ap. : S.D. Purohit, Adv.

Disposition : Revision dismissed

Judgement :

Chauhan, J.

1. The revision has been filed against the order dt.6.8.2001, by which the learned trial Court rejected the application of the petitioner-plaintiff filed under Order 14 Rule 5 of the Code of Civil Procedure, 1908 (for short, 'the Code').

2. The facts and circumstances giving rise to this case are that a suit was filed by the petitioner-plaintiff for permanent injunction on the basis of a Patta dated 18.1.75 for restraining the non petitioner-defendant to dispossess him from the suit premises. However, the non-petitioner took a specific plea in its written statement that the said Patta No.13124 dated 18.1.75 stood cancelled and the petitioner-plaintiff had encroached upon the land illegally. On the basis of the pleadings, an issue has been framed as to whether the petitioner-plaintiff is the owner and is in possession of the suit premises. The evidence has been led by both the parties. When the matter came up for final hearing, the application for framing a new issue had been filed Under Order 14 Rule 5 of the Code as to whether the Patta of the petitioner-plaintiff stood cancelled and the plaintiff had come into possession of the suit property only a day earlier to the filing of the suit. The learned trial Court has rejected the said application observing that the issues, which had already been framed, are enough to decide the controversy. Moreso, these facts were brought to the knowledge of the petitioner-plaintiff by the pleadings i.e. written statement a long back and after recording of the evidence of both the parties, it was not in the interest of justice to allow such an application. Hence this revision.

3. I have heard the learned counsel for the parties.

4. The pleadings do not state anywhere as on what date the suit was filed and when the issues were framed. However, Mr. Purohit, learned counsel for petitioner, has fairly stated that the written statement had been filed by the non-petitioner on 7.4.94, wherein specific plea had been taken that the Patta issued to the petitioner on 17.1.75 had been cancelled subsequently and the petitioner was not in possession of the suit premises after 15.11.84. The application under Order 14 Rule 5 had been filed after about six years from the date of filing of the written statement. The learned trial Court has rightly rejected the said application. Mr. Purohit could not furnish any explanation as why the said application could not be filed earlier. Once the evidence has been recorded, if this issue is permitted to be framed now, there will be fresh recording of the evidence to determine the same recalling all the witnesses relevant for that purpose. If the petitioner was aware of all these facts and did not make an application in time, it is not in the interest of justice to allow such an application of such a belated stage. I am of the

considered opinion that the material irregularity or illegality in exercise of its jurisdiction.

5. The revision is accordingly dismissed.

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