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Court : Rajasthan

Decided On : Apr-06-2010

Judge : Dalip Singh, J.

Appellant : Rajendra Kumar

Respondent : Addl. District and Sessions Judge (Fast Track) and ors.

Disposition : Petition allowed

Judgement :

ORDER

Dalip Singh, J.

1. This writ petition has been preferred by the plaintiff whose application for production of documents has been refused by the learned trial court vide impugned order dated 04.08.2005. The application submitted by the petitioner-plaintiff is Annexure-1 on record and the impugned order is Annexure-2 on record.

2. After notices were issued, the respondents have put in appearance.

3. I have heard learned Counsel for the parties and perused the record of this case.

4. As per the application, the plaintiff has sought to produce the following documents:

1. The original pronote;
2. The receipt;
3. Copy of the passbook of account No. 1431 of the State Bank of Bikaner and Jaipur, Branch Maathhan;
4. Telephone bills of STD PCO;
5. Ordersheets from 25.04.2003 to 27.06.2005 in a Revenue Suit [Rajendra v. Basant Lal] pending before the court of Assistant Collector, Bahrod;
6. Ordersheets in the suit No. 153/2001 [Prushottam v. Santosh Devi] from 06.08.2002 to 19.10.2004; and
7. Copy of the application filed under Section 212 of the Rajasthan Tenancy Act in the suit Prushottam v. Santosh Devi and Ors.

5. In the suit the plaintiff has prayed for specific performance of the oral agreement for sale of agricultural land which is said to have taken place on or about 9th April, 2001. The aforesaid application was contested by the defendant-petitioner and the learned trial court rejected the said application on the ground that under Section 151 C.P.C. the application was not maintainable as well as the application has been filed with considerable delay. The learned trial court also came to the conclusion that when the documents were within the power and possession of the plaintiff, it was the duty of the plaintiff to have filed the same. The learned trial court also came to the conclusion that the evidence in the case has already been concluded and the case is fixed for final hearing and several dates for final hearing have already been fixed in the case and, therefore, the sole aim of the defendant seems to be to delay the matter and allowing the application may result in re-trial.

6. I have heard learned Counsel for the parties and perused the impugned order as well as the application and the copy of the plaint which was supplied by the learned Counsel for the plaintiff-peitioner.

7. As per the plaint averments, the agreement was arrived at between the parties on 10.04.2001 and the defendant agreed to sell the land in dispute to the plaintiff

for a sum of Rs. 5,34,000/-. In para No. 6 of the plaint, the plaintiff has made an averment that on 10.04.2001 the plaintiff in pursuance of the agreement for sale paid to the defendants No. 1 and 2 an amount of Rs. 1,50,000/- in cash at the residence of the plaintiff. The plaintiff has further averred that on 09.04.2001 the plaintiff borrowed the amount from his brother-in-law Mahaveer Singh who in turn had withdrawn the said amount from Punjab National Bank, Rewadi and with a view to secure the said transaction of loan, the plaintiff has executed a pronote in favour of Mahaveer. Thus, so far as the document-pronote in question is concerned, I find that in the pleadings in para No. 6 of the plaint itself averments regarding the same have been made. Mahaveer who has been examined from the side of the plaintiff has also deposed regarding the execution of the pronote in his statement.

8. In view of the above, it cannot be said that so far as the production of pronote by way of application (Annexure-1) by the plaintiff is concerned the same is an afterthought.

9. Similarly, so far as the document No. 2, the receipt, is concerned, the averment in respect of the same has been made in para 8 of the plaint as in the case of the document No. 1, the pronote. Since an averment with regard to the same has been made in para No. 8 of the plaint, it cannot be said that the production of receipt is an afterthought or have been prepared subsequently.

10. The next document is the copy of the passbook of the account of plaintiff in State Bank of Bikaner and Jaipur, Madhan Branch. In the plaint, an averment to this effect has been made in para No. 7 regarding withdrawal of the amount from the aforesaid account for being paid to the defendant, as such, the plaintiff's case for production of the aforesaid document cannot be said to be malafide or based upon afterthought and reference to this document has already been made in the plaint. The mere fact that the same was not produced during the course of evidence by the plaintiff would not in the facts and circumstances of this case debar the plaintiff, from producing the same in evidence.

10. Regarding the ordersheets of the two cases the averments which have been made in Annexure-1 are corroborated by the pleadings of para No. 10 of the plaint

wherein the fact that the plaintiff was informed by Ram Kumar Mudgal, Advocate regarding the pendency of litigation has been made therein. In any case, so far as the ordersheets are concerned, they are a matter of court record and public documents and the genuineness of the same cannot be doubted.

11. As regards the telephone receipts of STD Booth are concerned, in the plaint in para No. 11, averments regarding the same and conversation on telephone has been mentioned in para No. 11 in the plaint and it cannot be said that it is an afterthought to produce the same or that they were not available at the time when the suit was filed.

12. As regards the application under Section 212 of the Rajasthan Tenancy Act is concerned, that again is a matter of record and no exception can be taken to the same regarding genuineness of the court record.

13. However, the plaintiff-petitioner has filed this application at a late stage and after having taken several adjournments for arguing the matter finally. That is a relevant circumstance and the plaintiff has been negligent in conducting the case. Learned Counsel for the petitioner submitted that when the plaintiff consulted other lawyers for arguing the matter, these drawbacks were brought to light and the plaintiff came to know that despite being in possession of material evidence the same had not been produced. In the facts and circumstances of the case the principle of Rules of Procedure being hand maids of justice and meant for advancing the cause of justice rather than impear the same may be applied and in the facts and circumstances of the case, I am inclined to accept this writ petition and allow the application.

14. With a view to balance the equities and the fact that defendants would also be required to incur the expenditure of time and money, I deem it just and proper to allow the application filed by the plaintiff-petitioner subject to payment of cost of Rs. 3,000/- to the defendants by the plaintiff before the trial court.

15. In the facts and circumstances of the case, the impugned order is set aside and the writ petition stands allowed, as indicated above.

16. Learned Counsel for the parties have submitted that since the matter is an old one, a direction may be given to the learned trial court to expedite the hearing and trial of the case. In the facts and circumstances, it is directed that with a view to afford an opportunity to the plaintiff, the plaintiff would submit the evidence mentioned in the application along with the affidavit of the concerned witness and shall also produce the witness on the next date already fixed for cross examination. After the documents have been produced along with the affidavits of the witness and the witnesses of the plaintiff have been cross examined, an opportunity will be given to the defendants for producing evidence in rebuttal. Thereafter the learned trial court shall proceed to decide the suit preferably within a period of three months.

17. The writ petition stands allowed. The stay application stands disposed of.

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