

(2007) 05 PAT CK 0121
In the Patna High Court
Case No : C.R. No. 642 of 2007

Bijay Bahadur Singh

APPELLANT

Vs

Vijayant Kumar Singh and Others

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17(a), 151

Citation : (2007) 4 PLJR 81

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Radha Mohan Pandey and Ashok Kumar, for the Appellant; Rajesh Prasad Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Heard learned Counsel for the parties. The petitioner has approached this Court against the order dated 17.1.2007 passed by Sub-Judge-I, Buxar in T.S. No. 47/98 by which he has refused to allow the prayer of the plaintiff-petitioner to recall the order closing the evidence and allow the petitioner to adduce one document as evidence.

2. The above Title Suit was filed for declaring as void and illegal the gift deed dated 1.10.1997 by Most. Kamla Devi, the adoptive mother of the plaintiff-petitioner, in favour of defendant No. 1 and not binding upon the title and possession of the petitioner over the aforesaid suit house and also for grant of injunction.

3. The petitioner had examined as many as 30 witnesses and during the course of the examination of the witnesses, he had made a prayer before the Trial Court for issuance of Dasti summons to the concerned office where the pension records of Most. Kamla Devi was being kept and ultimately on 22.9.2004 after the 30 witnesses have been examined, he again filed an application. It was stated in the order dated 22.9.2004 by which the application was allowed that a prayer was

made on behalf of the plaintiff-petitioner that he has only to give evidence on that particular document, therefore, if the defendants want, they can begin their evidence on which the learned counsel for the defendants also gave his consent.

4. It is submitted by the learned Counsel for the petitioner that the said pension records which are to be called for, contain the thumb impression of Most. Kamla Devi and after the said admitted thumb impression was produced in the Court, the same could be compared with the thumb impression of the alleged deed of gift which was under challenge in the present suit. It is further submitted that the said document is essential to be brought on the record as it is central to the case of plaintiff-petitioner.

5. It appears that Dasti summons was issued to the petitioner and thereafter, it was served on behalf of the plaintiff-petitioner to the concerned official of the Telecom Department but the second copy of the Dasti summons was not returned and filed in the Court below. Only much later when the evidence of the plaintiff was closed that an application was again filed under Order 18 Rule 17(a) of Section 151 of the CPC in which it was stated that certain evidence has been led on behalf of plaintiffs and in spite of efforts made the evidence could not be made available and the case of the plaintiff has been closed. Accordingly, it was prayed that the evidence of the plaintiff should be re-opened and the plaintiff should be permitted to lead his evidence. The said matter was affirmed by filing rejoinder on behalf of the defendants in which it was stated that the matter was coming for arguments after the evidence of the parties had closed and the plaintiff had already examined as many as 30 witnesses and it was not clear in the application as to what evidence was required to be given by the plaintiff.

6. After hearing the parties, the Court below had passed the impugned order dated 17.1.2007 rejecting the application stating that no second copy of the Dasti summons was filed in the Court after making service on the party concerned and on 8.11.2006, a photocopy of receipt of summons has been filed which also does not contain the seal of the concerned department. It is further stated in the said order that no further efforts were made by the petitioner in regard to obtaining the record from the concerned department. In such circumstances, the case being of year 1998, the application was rejected.

7. Learned Counsel for the petitioner submits that the document in question is central for the purpose of his case. It is further submitted that the evidence of the plaintiff-petitioner had not been closed by the order dated 22.9.2004 and by which the defendants have been permitted to lead their evidence until the pension records from the concerned department become available. It is further submitted that the Dasti summons were duly served but due to lack of proper knowledge, the second copy was not filed and belatedly he filed the photocopy of the receipt which shows that the Dasti summons had been delivered. It is submitted that although the seal of the office is not there but the same has been received by the responsible officer of the department and is genuine and his signature has not been challenged by the other side. In the said circumstances, it

is submitted that for such ignorance on the part of plaintiff-petitioner, he should not be punished to such an extent that a very crucial evidence on his behalf should be omitted from the case itself.

8. Learned Counsel for the defendants-Opposite Parties on the other hand referred to the fact which are mentioned in the impugned order above to show that at this belated stage, the evidence of the plaintiff should not be re-opened when the matter is at the stage of final argument. It is further submitted that for nearly 3 years, plaintiff had slept over the matter and never took any step for sending any reminder notices calling for the pension records. It is further submitted that the application (Annexure-8) dated 19.7.2006 filed in this regard is quite vague and does not at all refer to the fact that the particular document was to be taken in evidence and evidence of plaintiff is only with respect to the said document.

9. On a consideration of the rival submissions, this Court is of the view that the Court below has adopted a very technical approach in the matter and has not considered the substantial question involved herein. It is evident from the order dated 22.9.2004 that the case of the plaintiff was not formally closed by the order of that day but the defendants were only permitted to begin their evidence awaiting the pension records called for through the Dasti summons issued on that date. It is no doubt true that the plaintiff ought to have followed the proper procedure by submitting the second copy of Dasti summons in the Court to show that the summons had been duly served. It is further clear that the plaintiff has not taken steps thereafter to ensure that the concerned pension records were produced by the office in question by issuance of further summons or other processes as permitted by law. However, in the circumstances in which the Dasti summons were issued and defendants were called upon to begin their evidence, the Court below ought to have accepted the plea of the petitioner and permitted him to file application for issuance of fresh summon upon the concerned office so that the important record bearing upon the central issue in the suit in question could be placed before the Court for just and proper decision in the matter.

10. Thus, on a consideration of the entire facts and circumstances, this Revision application is allowed, the order dated 17.1.2007 is set aside and the Court below is directed to permit the petitioner to file an application for fresh summons from the concerned department and issue the summons so that the pension records of Most. Kamla Devi may be called for and the evidence of the plaintiff-petitioner as may be required could be examined in this regard. The Trial Court is directed to see that the matter is expedited and trial is concluded expeditiously preferably within 4 months from today. However, on account of the laches on the part of the plaintiff-petitioner, they are directed to pay a cost of Rs. 1500/- (one thousand five hundred) to the defendant-Opposite Parties in the case.