
(2009) 04 AHC CK 0289

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18249 of 2009

Chunna Lal and another

APPELLANT

Vs

Addl.District Judge, Kaushambi and others

RESPONDENT

Date of Decision : 20-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 04 AHC CK 0289

Hon'ble Judges : S.U.Khan, J

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned Counsel for the applicant and learned Counsel for the contesting respondents who has appeared through caveat.

2. In a suit filed 26 years before (O.S. No. 391 of 1983) petitioners are plaintiffs. In spite of direction earlier issued in a writ petition, filed by defendants/respondents, for expeditious decision of the suit, the suit has not yet been decided. Plaintiff/petitioners are responsible for the delay at least in the recent past. Plaintiff/petitioners are constantly filing applications for producing/summoning a witness.

3. This writ petition is directed against order dated 12.3.2008 passed by Trial Court/Civil Judge (Sr. Divn.), Kaushambi and order dated 27.2.2009 through which IInd Additional District Judge, Kaushambi dismissed the revision which was directed against order dated 12.3.2008. The dispute in the suit relates to the genuineness and validity of an alleged will dated 10.7.1980.

4. On 12.7.2002 evidence of the plaintiff was concluded and 19.7.2002 was fixed for the evidence of the defendants. On 19.7.2002 examination in chief of DW1 had been recorded. On the said date again adjournment application was filed by the plaintiff for granting some more time to cross-examine DW1 which was allowed on payment of Rs. 50/ as cost and 25.7.2002 was fixed for cross-examination. On 25.7.2002 again the case was got adjourned for 2.8.2002. On 2.8.2002 plaintiff

filed application that Shri R.R. Jaiswal, Advocate must be summoned as witness. That application was rejected and 9.8.2002 was fixed for cross-examination of DW1. On 9.8.2002 a detailed order was passed refusing to summon Shri R.R. Jaiswal, Advocate as plaintiff witness and also refusing to grant further permission to the plaintiff to cross-examine DW1. Against the said order revision was filed. Revision was disposed of with the direction to the Trial Court that in case plaintiff wanted to adduce some evidence, the said prayer might be considered sympathetically. It was further directed that prayer of plaintiff for cross-examining DW1 should also be considered sympathetically. In pursuance thereof Trial Court on 23.8.2002 passed an order which is contained in the order sheet, Annexure 7 to the writ petition. Through the said order plaintiff was permitted to adduce whatever evidence he wanted to adduce and 6.9.2002 was fixed for the said purpose. On 6.9.2002 plaintiff again sought adjournment which was rejected. Ultimately on the said date DW2 (or DW1) was cross-examined. The cross-examination was not concluded hence matter was adjourned to 20.9.2002 and then to 27.9.2002. On 27.9.2002, instead of continuing the cross-examination of DW1 plaintiff gave an application for impleadment under Order 1, Rule 10 C.P.C. On 5.12.2002 impleadment application was rejected and 10.12.2002 was fixed as the next date. On 10.12.2002 again plaintiff filed application for time to cross-examine DW2. The application was rejected. Thereafter a transfer application was filed by the plaintiff. On 19.5.2003 transfer application was allowed and suit was transferred to the Court of Civil Judge (Junior Division). On 10.10.2003 plaintiff filed application for opportunity to cross-examine DW Janki Devi and to produce his witness. Application was disposed of and plaintiff was permitted to cross-examine defendant's witness on payment of Rs. 500/. It was further mentioned that question of permitting the plaintiff to adduce some more evidence would be considered afterwards. Against the said orders civil revision was filed which was dismissed by Additional District Judge on 22.9.2005. Again plaintiff filed some application for summoning/ adducing Sri R.R. Jaiswal as witness, which was rejected on 15.9.2006. Again similar application was filed on 27.10.2006 for the same relief and for recalling the order dated 6.9.2002 which was rejected on 17.11.2006. Against the said order also revision was filed which was dismissed on 30.8.2007 by Additional District Judge, Kaushambi. Again before the Trial Court on 14.12.2007 plaintiff filed an application for recalling the orders dated 6.9.2002 and 10.12.2002 which were rejected by the Trial Court on 12.3.2008 Annexure 2 to the writ petition. Revision filed against the same has also been dismissed on 27.2.2009 hence this writ petition.

5. From the narration of the above facts it is quite clear that plaintiff has abused the process of Court to the maximum possible limit. Some parties and their advocates treat the C.P.C. as mother of all delaying tactics. Repeated opportunities were provided to the petitioner/plaintiff to adduce the evidence of Sri R.R. Jaiswal an Advocate who is stated to be witness of the will in dispute however, he did not avail that.

6. Writ petition is therefore dismissed with cost of Rs. 10,000/ which shall be included in the cost of the suit. Both the parties are directed to appear before the Trial Court on 4.5.2009. The Trial Court shall positively decide the suit within six months failing which matter may be referred to the Administrative Judge of the District in question to consider as to whether it would be appropriate to initiate disciplinary proceedings against the Presiding Officer. Absolutely no unnecessary adjournment shall be granted to any of the parties. If the Court below is inclined to grant any adjournment in any form to any of the parties, (on the adjournment application or application of any other sort like amendment, impleadment seeking time to do any particular thing or transfer application etc.) then it shall be on very heavy cost, which shall not be less than Rs. 1,000/ per adjournment.