
(2000) 03 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Revision Petition No. 279 of 1999

Gopiram Tailor

APPELLANT

Vs

Om Shanker and Others

RESPONDENT

Date of Decision : 16-03-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16

Citation : AIR 2000 Raj 282 : (2000) 2 WLC 459

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : G.C. Garg, for the Appellant; G.D. Parwal, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—This revision petition arises out of an order dated 24-9-1998 of the Additional Civil Judge (Junior Division) Jaipur (East) in Civil Suit No. 64/96, whereby he has dismissed application under Order 6, Rule 16, CPC filed by the petitioner (defendant).

2. The facts leading to this petition, briefly stated, are that the plaintiffs (landlords) (respondent Nos. 1 and 2) filed a civil suit for eviction against the defendant No. 1 (present petitioner-tenant) arraying Smt. Savitri Devi w/o Hari Shankar (original landlord) as defendant No: 2 (respondent No. 3 herein) pleading therein inter alia that Hari Shankar Shrimali (father of the plaintiffs) let out shop in dispute to the petitioner (defendant No. 1 Tenant) at Rs. 110/- per month, and after death of Hari Shankar Shrimali, the rent has been paid to Ram Shankar (plaintiff No. 2) because the suit shops had fallen in the share of the plaintiff No. 1 as a result of family settlement dated 27-11-1995 as pleaded in paras 1 and 2 of the plaint and the eviction has been sought by plaintiff No. 1 (Om Shankar) on the grounds of personal bona fide necessity and for causing damage and material alterations besides nuisance to the suit shop by the present petitioner tenant. The suit was contested by the petitioner-tenant. On the pleadings; of the parties, issues were framed. During trial, an application was

filed on 28-4-1997 to the effect that the alleged family settlement being not registered whereas it is compulsorily required to be registered, is not admissible in evidence and so cannot be admitted in evidence and this application was accepted by the trial Court under order dated 3-12-1997 holding that family settlement being not registered, is inadmissible and thereby it cannot be exhibited. It is the case of the petitioner-tenant that this order has become final as to his knowledge, it has not been challenged in revision or appeal. Thereupon, claiming that pleadings averred in the plaint as to the partition have become meaningless, the petitioner to tenant submitted an application under Order 6, Rule 16, CPC seeking deletion and striking off paras 2 to 5, 9 to 11 of the plaint itself. However, this application upon having been contested by the plaintiffs was dismissed by the trial Court under order dated 24-9-1998. Hence, this revision petition.

3. The learned counsel for the petitioner-tenant contended that the eviction has been sought on the strength of family settlement which since being not registered has been held by the trial Court, itself, to be inadmissible in evidence and such settlement has not been allowed to be exhibited, in as much as, whatever the pleading averred in the plaint by the plaintiffs on the strength of such inadmissible evidence like family settlement, has become unnecessary, frivolous and vexatious pleadings and, therefore, such pleadings averred in paras 2 to 5 and 9 to 11 in the plaint deserve to be struck off and deleted, and refusal to do so under Order 6, Rule 16, CPC by the trial Court has resulted in miscarriage of justice causing damages to the case of the tenant.

4. Per contra, learned counsel for the respondents (plaintiffs) contended that the application has been filed only with a view to delay the proceedings and to harass the plaintiffs, inasmuch as it has been done so at a belated stage when issues have already been framed since long and the trial is at the stage where evidence of the plaintiffs is going on and during recording statements of their some of witnesses, documents have been examined. In these circumstances, according to the learned counsel, the learned trial Court has rightly held that at the belated stage where the petitioners has cross examined plaintiffs witnesses, permission for striking out same of the pleadings of the plaintiff cannot be given merely on the strength of the document -- family settlement being allegedly not registered.

5. I have heard the learned counsel for the parties at length and perused the impugned order of the trial Court dismissing the application filed by the petitioner (tenant) under Order 6, Rule 16, CPC. Prima facie, I am of the opinion that the trial Court has committed no error of jurisdiction or law in dismissing the tenant's request for deleting pleadings of the landlord especially when the tenant has denied the title of the landlord in eviction suit, and refusal to permission under Order 6, Rule 16, CPC for striking out plaintiffs pleadings from the plaint merely on the ground that the document, i.e. family settlement being not registered has not been allowed to be exhibited after having been held to be

inadmissible evidence. In my considered view, even if the family settlement is not registered, it can be used for a collateral purpose viz., with a view to show nature and character of possession of the parties as a result of the family settlement especially when in eviction suit like the present one, the tenant has denied the title of the plaintiff. I am fortified with the view expressed in *Kale and Others Vs. Deputy Director of Consolidation and Others*, That apart at the stage when the striking out the pleadings under Order 6, Rule 16, CPC is totally at belated stage and when the party seeking deletion of pleadings has already went on cross examining opponent's witnesses after issues have been framed and the trial Court was perfectly right in refusing to the prayer for striking out pleadings under Order 6. Rule 16, CPC. Thus, the impugned order, if allowed to stand, would not occasion a failure of justice nor its effect would be infliction of irreparable injury to any party, and, therefore, this Court is not prone to interfere by invoking jurisdiction under Section 115, CPC even if impugned order has any illegality or is affected by material irregularity unless it results in causing failure of justice, which in the case on hand is lacking in the facts and circumstance as discussed above.

6. I have examined the ratio of the following decisions cited by the learned counsel for the petitioner (tenant), (1) *Gopal Dass and Others Vs. Nathulal Baraya*, and (2) *Amalgamated Commercial Traders Private Ltd. Vs. C. Hariprasad*, In my considered view, ratio of these decisions is not attracted to the present case. There is no dispute with regard to proposition that every Court has inherent powers quite independently under Order 6. Rule 16, CPC to strike out scandalous matter in any record or proceeding and u/s 151, CPC the Court has power to expunge scandalous allegations which are irrelevant to the proceedings.

7. The power has been given to the Court under Order 6, Rule 16, CPC to strike out any matter in a pleading that may tend to embarrass a fair trial of the suit. There is a certain amount of peril for the party who takes absolutely inconsistent pleas granted on different and contradictory fact and while leading evidence in support of them he will have to blow hot and cold in the same breath which is bound to shake confidence in the truth of his allegations. That being so, in a suit for eviction if the tenant challenges plaintiff's title to the suit shop, he cannot at the same time plead that the pleadings averred in the plaint by the plaintiff to show title over the suit shop by virtue of family settlement be that inadmissible evidence under earlier orders of the trial Court cannot be held to be scandalous or irrelevant in eviction suit nor can be held that such pleading tended to embarrass a fair trial of the suit. Therefore, I do not find any illegality or material irregularity in the impugned order of the trial Court under Order 6, Rule 16, CPC.

8. As a result of the above discussion, I find no merit in this revision petition and thereby the same is dismissed with no order as to costs.