

(2012) 10 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15709 of 2012 and Civil Miscellaneous Stay Application No. 13317 of 2012

Jhuthi Devi

APPELLANT

Vs

Rasool Mohammed and Others

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 2(4), Order 18 Rule 3

Citation : (2013) 1 CDR 242 : (2013) 3 RLW 1891 : (2012) 4 WLN 415

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Khalid Mehmood on behalf of Mr. Shamsuddin Ansari, for the Appellant;

Final Decision : Dismissed

Judgement

Alok Sharma, J.—This petition has been filed against the order dt. 07.09.2012 whereby the application of the respondent No. 1 Rasool Mohammed under Order 18 Rule 3 CPC as non-objector before the executing Court has been allowed and the trial Court has denied the petitioner, as objector to lead rebuttal evidence in the course of execution proceedings. The facts of the case are that Rasool Mohammed respondent-plaintiff (hereinafter "the plaintiff") instituted a suit for eviction against one Babu Lal respondent No. 2 herein and son of the petitioner (hereinafter "the defendant") before the learned Additional Civil Judge (Jr. Division) No. 1, Jaipur City, Jaipur which was dismissed on 06.04.1998. The plaintiff Rasool Mohammed filed an appeal No. 45/1998 against the judgment dt. 06.04.1998 before the learned District & Sessions Judge, Jaipur which was allowed vide order dt. 24.11.1998 and the suit for eviction was decreed in favour of the plaintiff. The order dt. 24.11.1998 passed in appeal has since not been modified, vacated or set aside, the same has attained finality. Consequently, the plaintiff took execution proceedings.

2. In the execution proceedings taken by the plaintiff one Jhuthi Devi, the

mother of defendant, filed objections. The objections were opposed by the plaintiff. On the pleadings filed under execution proceedings, issues were framed. The objector (now the petitioner, Jhuthi Devi) led her evidence on the issues framed by the learned executing Court. The objector and the plaintiff as the non-objector led their respective evidences. Thereafter, following the closure of the evidence of the parties in the execution proceedings, the objectors sought to bring in additional evidence by way of rebuttal. In opposition to the additional evidence sought to be brought in by the objectors through rebuttal evidence, the plaintiff filed an application under Order 18 Rule 3 CPC.

3. On the said application under Order 18 Rule 3 CPC filed by the plaintiff (non-objector), the executing Court has taken a view that the objector not having reserved her right to lead rebuttal evidence either by way of application in writing or by way of recorded oral submission, in respect of issues on which the burden was on the objector, she could not be allowed to lead rebuttal evidence in view of the plain language of Order 18 Rule 3 CPC. In support of its conclusion, the executing Court relied on a judgment of this Court reported in Kalyan Dass Vs. Kishan Karan, titled Kalyan Dass vs. Kishan Karan. Counsel for the petitioner-objector has however submitted that the judgment of this Court in the case of Kalyan Dass (Supra) has been diluted by this Court in its subsequent judgment in the case of Gad Singh and Others Vs. Phool Chand and Another, It has been submitted that this Court in the case of Gad Singh (Supra) relying on the judgment of the Punjab and Haryana High Court in Prem Singh Partap Singh Vs. National Insurance Co. Ltd. and Others, has held that it is not imperative that the option to lead rebuttal evidence should be specifically exercised by way of moving an application for the purpose or having the option formally recorded in the order-sheet of the concerned Court.

4. It has been submitted that the Court has taken a view that even an implied option to reserve the right to lead rebuttal evidence can be culled out from the record of the proceedings. It is submitted that consequently in view of subsequent judgment in the case of Gad Singh (supra), the objector ought to have been allowed to bring in her rebuttal evidence in respect of issue No. 3 even where a formal application or an oral recording in regard thereto had not been made on the file of the trial Court at the time of commencement of the objector's evidence.

5. I have considered the submissions made by the learned counsel for the petitioner and perused the petition including the impugned order.

6. In my considered view, the judgment of this Court in the case of Kalyan Dass is absolutely clear in holding that a further opportunity of leading evidence in rebuttal could not be allowed to a party on the vague ground of "injustice" when such party first leading evidence has failed to reserve its right of leading rebuttal evidence either by way of application in writing or by way of making specific oral request recorded by the Court before the commencement of evidence. The subsequent judgment of this Court in the case of Gad Singh (supra) appears to

have merely side tracked a well considered judgment of this Court in Kalyan Dass (supra) without negating the principle expounded therein. In my considered opinion, even invoking the principle of "implied option" as enunciated by the Hon"ble Punjab and Haryana High Court in Prem Singh Pratap Singh (Supra) would be of no avail in the present case inasmuch as the drawing of an implied option would be dependent upon the facts of a given case. From the facts of the present case, it is evident that no such case of an implied option to exercise the right to lead rebuttal evidence can be culled out. In fact, no such argument appears to have been raised before the trial Court nor in fact was it so argued before this Court or any such ground taken in the petition laid before this Court. Consequently, the principle of implied option enunciated in the judgment of the Punjab and Haryana High Court in the case of Prem Singh Pratap Singh (Supra) as followed in Gad Singh (Supra) is of no avail to the petitioner.

7. Aside of the aforesaid, the learned Single Judge in the case of Gad Singh (Supra) had invoked Order 18 Rule 2(4) CPC, 1976, which has since then been deleted by way of an Amendment under Sec. 27 of the Act 46 of 1999 effective 01.07.2002 and thus was not on the statute at the time relevant to the proceedings before the executing Court.

8. Consequently, in my considered opinion, there is no error in the impugned order dt. 07.09.2012, passed by the executing Court as it is based on a well considered and able judgment of this Court in the case of Kalyan Dass (Supra), which is fully in consonance with the plain language of Order 18 Rule 3 CPC. The writ petition deserves to be dismissed. Dismissed, accordingly. Stay application also dismissed.