
(2013) 01 RAJ CK 0104
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6768 of 2010

Kumari Anand

APPELLANT

Vs

Smt. Bhikhi Bai and Others

RESPONDENT

Date of Decision : 23-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 14, Order 7 Rule 14(3), 151

Citation : (2013) 1 WLN 404

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Jitendra Chopra, for the Appellant; M.S. Purohit, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—The present writ petition has been filed by the sole defendant-petitioner aggrieved by the order dt. 07.07.2010 passed by the learned trial Court, whereby, the application filed by plaintiff Pokar Ram under Order VII Rule 14 CPC was allowed on a cost of Rs. 1000/- and original adoption deed has been taken on record. The brief facts of the case are that Smt. Bhikhi Bai W/o late Shri Ghasi Ram and Pokar Ram S/o Shri Ghasi Ram filed a suit for declaration and cancellation of Will said to have been executed by late Shri Ghasi Ram.

2. The suit was resisted by the petitioner-defendant on various grounds and on filing of written statement various issues were framed. Issue No. 3 related to the fact whether Pokar Ram - plaintiff No. 2 was not adopted son of plaintiff No. 1 Smt. Bhikhi Bai and burden of the said issue was on the defendant.

3. The parties led their evidence on the said issues. It appears that the plaintiff No. 2 Pokar Ram attained majority during the pendency of the suit which was filed on his behalf by his mother Smt. Bhikhi Bai as next friend. However, he was denied opportunity for rebutting the evidence on issue No. 3 vide order dt. 20.04.2009 by the learned trial Court. The said order dt. 20.04.2009 was questioned before this Court and this Court in S.B. Civil Writ Petition No.

1537/2009 disposed of the writ petition with direction to the trial Court to allow an opportunity of rebuttal of the evidence to the plaintiff-petitioner on the date fixed by the trial Court subject to payment of cost of Rs. 2000/-.

4. On being provided the said opportunity by this Court vide its order dt. 08.07.2009, the petitioner Pokar Ram filed his own affidavit and that of Smt. Bhikhi Bai, Dhanraj and Hanuman Ram and also filed application under Order VII Rule 14(3) CPC read with Section 151 CPC for taking the adoption deed on record.

5. The application under Order VII Rule 14 filed by the plaintiff was opposed by the petitioner-defendant and another application under Sec. 151 CPC was filed by her seeking removal of the affidavits filed by the plaintiff Pokar Ram alongwith his own affidavit in rebuttal evidence.

6. Learned trial Court after hearing the parties allowed the application under Order VII Rule 14 CPC filed by the respondent Pokar Ram and dismissed the application under Sec. 151 CPC filed by the petitioner herein. The learned trial Court was of the opinion that for the just decision of issue No. 3, the said document was very important and relevant and, therefore, it would be justified to take the same on record and imposed a cost of Rs. 1000/- on plaintiff and rejected the application under Sec. 151 CPC filed by the petitioner herein.

7. I have heard learned counsel for the parties and perused the material placed on record.

8. It is submitted by learned counsel for the petitioner that the adoption deed sought to be produced under Order VII Rule 14 was available even before the suit was filed and the said fact was admitted by Smt. Bhikhi Bai during course of her cross-examination.

9. However, the plaintiffs chose not to file the said document on record. Non filing of the said document on record has deprived the petitioner from leading evidence on the said document while discharging its burden on issue No. 3. Now if the said document is taken on record and the plaintiffs are allowed to lead evidence on the said document, petitioner would have no opportunity to lead evidence relating to the said document and, therefore, the learned Court below was not justified in allowing the application under Order VII Rule 14 CPC.

10. Learned counsel for the petitioner relied on the judgment reported at 2010 (3) DNJ (Raj.) 1108 (Ladu vs. Ramlal & Ors.) and 2010 (3) DNJ (Raj.) 1347 (Mohan Lal vs. Smt. Brij Kanwar & Ors.), for the proposition that no cogent reasons for submitting application at the last stage of trial was given by the parties therein and, therefore, no illegality was committed by the Court in rejecting the application in those cases.

11. On the other hand the counsel for the respondents submitted that once this Court vide its order dt. 08.07.2009 allowed the defendant to lead evidence in rebuttal specifically with regard to issue No. 3 which related to the fact of his

adoption, then unless the said document which is a vital piece of evidence is allowed to be taken on record, the order granted by this Court would become futile and it would result in grave injustice to him.

12. I have considered the rival submissions made on behalf of the parties.

13. In the opinion of this Court, if reasons for belated production of document are explained, the Court may have to lean in favour of receiving the documents since it is the fundamental principle that the parties should be permitted to lead in all possible evidence which are relevant for the purpose of adjudicating the matters in controversy before the Court.

14. Throwing the evidence on technical grounds and preventing a party producing the evidence, unless it is a deliberate attempt to delay the matters, normally cannot be permitted.

15. In the present case, admittedly this Court vide its order dt. 08.07.2009 permitted the respondent Pokar Ram to lead evidence in rebuttal on issue No. 3 which specifically related to the fact of his adoption to Smt. Bhikhi Bai. The said defendant Pokar Ram in fact had no opportunity to produce the said document, inasmuch as, he being minor earlier was being represented by his mother Bhikhi Bai, who in fact admitted in her cross-examination that the document in question was in existence and in her possession. The said admission by Smt. Bhikhi Bai clearly suggests that the document was very much in existence and there is no question of the same being cooked up or fabricated which, even otherwise, is not the case of the petitioner herein. It is also clear from what has been noticed above that the issue of adoption of Pokar Ram to Smt. Bhikhi Bai is inter alia a core issue and the adoption deed in this regard is a vital piece of evidence which cannot be denied to be taken on record on the grounds submitted by the learned counsel for the petitioner. The petitioner would have ample opportunity to cross-examine and try to demolish the said document when Pokar Ram and his witnesses in rebuttal evidence appear in the witness box and, in that view, it also cannot be said that any injustice is being caused to the petitioner. In view of the discussion herein above, the petition filed by the petitioner has no substance and the same is, therefore, dismissed. No costs.