

(2025) 05 RAJ CK 0602

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 17672 Of 2022

Mahipal Singh

APPELLANT

Vs

Kundan Mal

RESPONDENT

Date of Decision : 26-05-2025

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Medical Termination of Pregnancy Act, 1971 — Section 3, 3(4)(a), 5
Bharatiya Nyaya Sanhita, 2023 — Section 137(2)

Citation : (2025) 05 RAJ CK 0602

Hon'ble Judges : Chandra Prakash Shrimali, J

Bench : Single Bench

Advocate : Sapna Vaishnav, I.R. Choudhary, Pawan Bhari, N.S Rajpurohit, Shersingh Rathore, Rakhi Choudhary

Final Decision : Disposed of

Judgement

Arun Monga, J

1. The petitioner (defendant) is before this Court seeking quashing of the impugned order dated 03.09.2022 passed by the learned Senior Civil Judge, Sirohi, in Civil Original Suit No. 05/2015, to the extent it closed the petitioner's evidence.

2. Brief facts pleaded in the petition are that the respondent-plaintiff filed a civil suit before the trial court seeking a declaration of ownership, possession, and recovery of mesne profits amounting to Rs.22,500/- against the petitioner-defendant concerning a shop located within the premises of the Government Hospital in Village Varada, Sirohi. The respondent claimed ownership of two shops based on a Patta in his name, asserting that the shop in question was first let out to the petitioner's father in 2001 and then to the petitioner in 2013. He alleged that the petitioner stopped paying rent and, despite a legal notice issued on 01.10.2014, failed to vacate the premises or pay the dues, prompting the suit.

2.1. In response, the petitioner denied all claims, contending that the respondent was not the owner and that the Patta was forged and fabricated. He claimed he never rented the shop from the respondent, but instead constructed it himself and had been in continuous possession for over 12 years. He argued that the suit should be dismissed with costs.

2.2. After the exchange of pleadings, the trial court framed nine issues for determination. Both parties led their evidence, the respondent examined himself and one witness, and the petitioner filing his affidavit and being cross-examined.

2.3. During the evidence stage, the petitioner filed an application under Order 8, Rule 1(3) read with Section 151 CPC to place on record an enquiry report from the Zila Parishad dated 19.08.2019, which stated that no Patta was issued to the respondent. The respondent opposed, alleging manipulation and lack of opportunity to be heard. However, the trial court allowed the application on 26.07.2021.

2.4. Following this, the petitioner moved an application under Order 16, Rule 1(3) CPC to summon the Panchayat officer to testify regarding the enquiry report. The respondent again objected. Subsequently, the respondent filed an application under Order 7, Rule 14(3) CPC on 16.10.2021, seeking to place on record additional ownership documents such as the Jamabandi, Gift Deed, Map, and Land Conversion Order. The petitioner opposed the move as an attempt to fill lacunae belatedly. Nonetheless, the trial court permitted the respondent to submit these documents through its order dated 07.04.2022.

2.5. The petitioner challenged this order in SB CWP No.6829/2022 before the High Court, which stayed further trial proceedings on 08.09.2022. Notwithstanding, on 03.09.2022, before the stay granted by this Court could be implemented, the trial court closed the petitioner's evidence and also the respondent's rebuttal evidence. Hence, this petition.

3. Learned counsel for the petitioner argues that the learned trial court erred in law and facts by closing the petitioner's evidence, despite having earlier allowed the application to summon Mahipal Singh, the Enquiry Officer, deeming his testimony necessary. It is argued that on 16.07.2022, an application was filed seeking time, as the witness, being a government officer, was on official duty. It is also emphatically pointed out that Writ Petition No. 6829/2022 was pending before the High Court. Hence, the trial court's observation that multiple opportunities were given but the witness was not produced is unjustified in the given circumstances.

4. I have heard learned counsel for the parties and perused the case file.

5. It transpires that what weighed on the mind of the learned trial court was that granting of further opportunity to the petitioner would result in delay of the trial proceedings. No doubt, granting of opportunity would have resulted in delay, but the same could have been compensated by imposing cost. While justice delayed

is justice denied, at the same time, justice hurried is justice buried. Without proper evidence, being adduced before the learned trial court, the adjudication on the issues involved, may result in erroneous findings.

6. Moreover, I am in agreement with the aforementioned arguments of learned counsel for the petitioner. I am of the view that in the interest of justice, one more opportunity ought to be granted to the petitioner, subject to payment of cost of Rs.5,000/-. It is made clear that no further opportunity shall be granted at the instance of applicant. However, the learned trial court may adjourn the matter depending upon its work exigency.

6. The writ petition is disposed of accordingly.

7. Pending applications, if any, stand also disposed of.