
(1987) 04 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Revision Petition No. 877 of 1986

Municipal Council, Bharatpur

APPELLANT

Vs

Gokul Chand and Another

RESPONDENT

Date of Decision : 04-04-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2

Citation : AIR 1988 Raj 103 : (1987) RLW 640 : (1987) WLN 734

Hon'ble Judges : Inder Sen Israni, J

Bench : Single Bench

Advocate : G.K. Garg, for the Appellant; R.S. Kejriwal, for the Respondent

Final Decision : Allowed

Judgement

Inder Sen Israni, J.—This revision petition has been filed against the order dt. 29-10-1986 passed by the learned Addl. Munsiff and Judicial Magistrate No. 1, Bharatpur, whereby the application filed by the petitioner under Order 13, Rule 2, C.P.C. was dismissed.

2. I have heard learned counsel for both the parties and also perused the impugned order as well as the law cited at the bar.

3. The contention of Mr. G. K. Garg, appearing on behalf of the petitioner is that an application was filed on 6-12-1983 for bringing 3 documents on record, all of which are certified copies of judgments of various courts and therefore, are above suspicion. The application was rejected by the learned trial court on the ground that it is belated and that the affidavit filed in support of the application was not in terms of the application itself and no reasonable cause has been shown for filing the documents late. It has been pointed out by the learned counsel that the judgments relate to a suit filed against Brijlal father of the plaintiff non-petitioner 1, by one Rahimulla. The judgments relate regarding the disputed land and the case was decided against Brijlal who filed an appeal and revision, which were also dismissed. It is, therefore, contended that these are

relevant documents for just and proper decision of the case, in which the plaintiff non-petitioner 1 claims to be the owner of the disputed land. It is pointed out that in the affidavit filed in support of the revision application, it was stated by the Commissioner of Nagar Parishad, Bharatpur that the source of information regarding existence of the documents was from official record. It is pointed out that the officer-in-charge of the case in the trial court got information regarding existence of the documents in question from Panna Lal which fact was mentioned in the official record by him. The Commissioner, therefore, rightly wrote in his affidavit that his source of information regarding these documents was from the official record. Therefore, there was no contradiction between the facts mentioned in the application under Order 13, Rule 2 and the affidavit given in support of the same. It is, therefore, submitted that the documents being above suspicion and the certified copies of the judgments of various courts regarding the disputed land should be admitted so that, justice can be done to the parties.

4. Learned counsel Shri R. S. Kejriwal, appearing on behalf of the non-petitioner has supported the order of the trial court and has raised a preliminary objection that no revision lies against the impugned order, by which the application under Order 13, Rule 2, C.P.C. has been dismissed. He has placed reliance on the case of Radhey Shyam Vs. Nathuram, in which it was held by this court that when an application under Order 13, Rule 2, C.P.C. has been dismissed, no revision lies against the same. It is, therefore contended that the revision petition should be dismissed on the (this) ground alone. It is further contended that the documents sought to be produced on record are not relevant and no good reason has been shown for late production of the same. It is also pointed out that the evidence of the plaintiff non-petitioner has been closed and it will be improper to permit the production of documents at this stage, when the case is ripe for final arguments. He has also drawn my attention to the case of Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, in which their Lordships held while considering the application filed under Order 22, Rule 9(2) and (4), C.P.C., that the subordinate court exercises its discretion in favour of the applicant and found that sufficient cause existed to condone the delay. This decision did not involve the question regarding irregular exercise or non-exercise of jurisdiction or illegal assumption of jurisdiction. It was, therefore, held that interference by the High Court in revision was an error in law. It is therefore, submitted by the learned counsel that even on merits, no interference is called for in the decision taken by the trial court.

5. The Amending Act, 1976 amended the provisions of Section 115, C.P.C. also and the amended portion added thereto in my view, has increased the scope of the section and added few more grounds on which this court has been empowered to interfere in the orders passed by the subordinate courts. The suit was filed by the plaintiff non-petitioners for declaration and injunction regarding the land under suit, which was also involved in the litigation regarding which 3 judgments were sought to be filed by the petitioner by way of filing an application under Order 13, Rule 2, C.P.C.

6. From the above discussion, I am of the opinion that there is no contradiction in the application and the affidavit filed in support thereof. The petitioner could apply for certified copies of the documents only when the knowledge regarding its existence was known to it. In the case of *Smt. Buchi Bai v. Nagpur University* AIR 1946 Nag 377, the Division Bench of the court held that merely because the document is produced at late stage, is not the sufficient ground for its rejection. In this case it cannot be said that the petitioner is guilty of filing the documents late in view of the facts stated in the application filed under Order 13, Rule 2, C.P.C. and the affidavit given in support thereof. The procedure is meant for facilitating the dispensation of justice and not for causing impediment in the path of justice. The rules are framed only with a view to advance the cause of justice and, therefore, in order to do substantial justice, technical rules of procedure should not be adopted like rituals. *Nand Kishore v. Budh Ram*, 1986 LR 537 was a case, in which in the application filed under Order 13, Rule 2, no sufficient reasons were disclosed regarding non-production of documents at the earlier stage and it was not disclosed how and when the document were discovered. The trial court admitted the document as subject to payment of cost. On revision it was held by this court that the documents should not have been admitted as there was no justification for admission of the document at that late stage. In the case of *Ashoka Marketing Ltd. Vs. Rothas Kumar and Others*, some documents were filed by the plaintiff by way of filing an application under Order 13, Rules 1 and 2, C.P.C. which were in his possession and should have been produced on the first hearing itself. However, it was held that the object of the rule is to prevent fraud by late production of suspicious documents. The rule is not penal in nature and it invests the court of law with discretion to accept the documents particularly those, which are above suspicion even though filed late, since the courts exist to assure fair trials. In the case of *Yaqoob Ali v. F. Haji Taj Khanji Ibrahimji*, 1983 Rajasthan LR 271, it was held by the Division Bench of this court that explanation to Section 115, C.P.C. makes it clear that the expression "In case which has been decided" also includes the order made in the course of a suit or other proceedings. Therefore, there is no room for controversy that the High Court is empowered to rectify the order of subordinate court at any stage of suit or other proceedings.

7. My attention has also been drawn to the case of *Nirmal Kumar v. Shanti Chand* (Civil Revn. No. 238/85) decided on 25-5-86 in which also it was held that when the petitioner has shown good cause for late production of documents, the High Court should not have refused to accept the same in evidence. In the case of *Gyaniram and Another Vs. Gulab Chand*, it was held that while admitting documents produced at a later stage, the court should be liberal and should not exclude the documents, which are above suspicion, if the same are necessary for the purposes of the decision of the case.

8. I am therefore, of the opinion that if the order of the trial court is allowed to stand, it would occasion a failure of justice, inasmuch as the documents are certified copies of judgments of various courts and relate to the land in dispute in

the suit itself and therefore, should have been allowed by the trial court to have been taken in evidence.

9. In the result, the revision petition is allowed. The order of the trial court dt. 29-10-1986 is therefore, set aside. The application of the petitioner dated 6-12-1983 filed under Order 13, Rule 2. C.P.C. is allowed on payment of cost of Rs. 300/-.