

(1999) 03 RAJ CK 0059

In the Rajasthan High Court

Case No : Civil Revision Petition No. 935 of 1998

Preeti Parihar and Others

APPELLANT

Vs

Mali Sansthan

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Evidence Act, 1872 — Section 114, 3, 6, 7, 8

Citation : (2000) 2 CivCC 186 : (1999) 3 RLW 1486 : (2000) 1 WLC 654 :
(1999) 1 WLN 439

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Singh, J.—Heard the learned Counsels of the parties.

2. This petition is directed against the order dated 4th August, 98 passed by the learned Additional District Judge No. 1, Jodhpur in civil suit No. 711/97, whereby the application filed by the petitioner-defendant under Order 6 Rule 16 C.P.C. was rejected.

3. The learned Counsel for the petitioner has submitted that the impugned order is bad in law, because the substantial portion of the pleadings made by the plaintiff-non petitioner was not necessary in view of the case set up by him that the defendant was a tenant. It is further submitted by him that the learned lower court has committed a serious error by rejecting the petitioner's application under Order 6 Rule 16 C.P.C.

4. The learned Counsel for the non-petitioner has opposed this petition on two grounds. The first is, that this petition is not maintainable in view of the provisions contained in Section 115 C.P.C. The second ground is that on merits, the pleadings contained in the plaint were necessary in order to place before the court all relevant facts necessary for establishing the case set up by the plaintiff-

non petitioner.

5. Order 6 Rule 16 C.P.C. reads:

16. Striking out pleadings. - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading,-

(a) which maybe unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the Court.

6. I have carefully gone through the plaint filed by the non- petitioner before the learned Additional District Judge. There is nothing in the plaint to show that Clause (c) of Rule 16 of Order 6 C.P.C. is attracted Clause (b) of Rule 16 of Order 6 C.P.C. is also not attracted, because the pleadings contained in the plaint cannot be said to be calculated to prejudice, embarrass or delay the fair trial of the suit. The pleadings contained in the plaint cannot be called scandalous, frivolous or vexatious at this stage when the parties have not produced any evidence at all and the issues are yet to be framed. The only question to be decided is whether the pleadings can be said to unnecessary within the meaning of Clause (a) of Rule 16 of Order 6 C.P.C.

7. The expression "necessary" as used in Clause (a) of Rule 16 of Order 6 C.P.C. has not been defined in the Civil Procedure Code. Therefore, this expression will have to be interpreted in view of other relevant provisions including the provisions contained in the Indian Evidence Act. Sections 6, 7, 8 and 9 of the Evidence Act point out what facts would be treated as relevant, even though, they may not be the fact in issue. A bare perusal of Sections 6, 7, 8 and 9 of the Evidence Act shows that a large number of facts may fall within the category of relevant facts, even though, they cannot be called facts in issue. In my humble opinion, every fact, which is relevant under the Evidence Act will have to be regarded as a "necessary fact" so far as the adjudication by Court is concerned, even though, such fact may not be a fact in issue. The reasons for this conclusion are not difficult to be pointed out. All the decisions about facts are ultimately the decisions in the form of presumptions or inferences drawn by the Court u/s 114 and other relevant provisions. In order, the Court may arrive at a correct conclusion about any fact, it is a necessary that all relevant facts should be brought to the notice of the Court whether they are or they are not the facts in issue. So far as the inference based on circumstantial evidence is concerned, the law is well established that the chain of circumstances must be complete and if the chain is broken, then the circumstantial evidence may not be sufficient to arrive at a certain conclusion. The Evidence Act, therefore, permits the parties to produce all relevant facts before the Court whether they are or they are not facts in issue, so that the relevant facts may not be concealed and the Court should be enabled to form a correct conclusion having regard to the totality of circumstances brought to its notice. The definitions of the expression "proved"

"disproved" and "not proved" given in Section 3 of the Evidence Act clearly show that a fact is said to be proved when, after considering the matters before it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The "circumstances" referred to in the definition of "proved" in Section 3 of the Evidence Act" obviously refers to all relevant circumstances and the expression "the matters" used in this definition means and includes all relevant matters. In this view of the law, no party can be permitted to conceal any fact, which is relevant, because such relevant fact would be necessary for the purpose or arriving at a correct conclusion about the fact in issue.

8. I am therefore, of the considered opinion that so long a fact is a relevant fact under any provision of the Evidence Act, it cannot be regarded as "unnecessary" for the purpose of Clause (a) of Rule 16 of Order 6 C.P.C. even though, such fact may not be the fact in issue.

9. It may also be noted that parties are not supposed to plead law before the Courts, though, we permit them to submit their cases with reference to the law applicable to their cases. They do not plead the law as such. They plead their own case taking shelter of law applicable to them, is, therefore, not necessary for the parties coming to the Court to take an particular stand so far as the law is concerned and even if a party takes particular view of law and makes submissions in the Court, no rule of estoppel can be applied against it, because the rule is well established" there can be no estoppel against the Statute. It is the function of the Court to apply the law to facts ascertained by it. The responsibility of the parties is therefore, to place all the relevant facts before the Court by way of appropriate pleadings and to prove them. The only exception to this rule may probably be the cases to which the golden rule of evidence, "that the best evidence should be produced" applies. Therefore, if best evidence is available, the inferior kind of evidence may not be produced by the party.

10. In the instant case, there is a long chain of events relating to the disputed property and according to the averments made in the plaint, there is an agreement alleged to have been executed by the Principal of the School undertaking to pay a sum of Rs. 5,000/- to the plaintiff as consideration for the use of the property in dispute. It is also averred in the plaint that in some other case, the defendant has taken the plea that she is the tenant in respect of the suit property and on the basis of this admission, the plaintiff has thought fit to prefer the claim founded on alleged tenancy. In order, the Court may properly adjudicate the real character of the parties and the real partnership between them, it is necessary that all relevant facts should b before the Court.

11. For the above mentioned reasons, I do not find any infirmity in the impugned order passed by the learned Additional District Judge. The revision petition has no force. It deserves to be rejected and is hereby rejected.