
(2020) 09 RAJ CK 0060
In the Rajasthan High Court
Case No : Civil First Appeal No. 318 Of 2018

Sewak Singh

APPELLANT

Vs

Kalwant Singh And Ors

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Citation : (2020) 09 RAJ CK 0060

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Trilok Joshi

Final Decision : Allowed

Judgement

At the request of the learned counsel for the parties, the matter has been finally heard as the record of the trial court has already been received.

This appeal is directed against judgment and decree dated 14.03.2018 passed by Additional District Judge, Jaisalmer, whereby the suit filed by the appellant for declaration, cancellation of sale-deed and power of attorney and permanent injunction has been dismissed.

The suit was filed seeking cancellation of sale-deed dated 22.06.2012 executed by defendant No. 1 as power of attorney holder of the plaintiff in his own favour. Several allegations were made regarding the collusion between defendant No. 1 and defendant Nos. 2 & 3 and validity of the sale-deed was questioned and it was claimed that the same was void.

The suit was filed on 05.10.2012 to which the written statement was filed on 22.04.2013 denying all the averments and claiming that the plaintiff was paid the consideration as indicated in the sale-deed.

The trial court framed the issues on 19.09.2016 and the matter was fixed for the evidence of the plaintiff. Despite granting several opportunities, when no evidence was produced, on 02.06.2017, the evidence was ordered to be closed

and matter was fixed for defendants' evidence. Even on 14.07.2017, no evidence was produced by the plaintiff and again order was passed closing the evidence. The defendant also did not produce any evidence and the same was closed on 14.03.2018 and on the same day, the trial court essentially indicating that as no evidence was produced by the plaintiff and the defendants, decided both the issues against the plaintiff and dismissed the suit.

Learned counsel for the appellant made submissions that though, the appellant is not justifying the time taken in and failure to produce evidence when the same was closed, in fact the lawyer, who was appearing for the appellant did not appear for few dates and, therefore, another lawyer was engaged, who sought time on two occasions, whereafter, the evidence was closed.

Submissions have been made that looking to the nature of the case, wherein, the respondent No. 1 claiming himself to be the power of attorney holder of the appellant, has executed sale-deed in his own favour and that several Criminal and Revenue litigations are pending before various courts, the dismissal of the suit would result in irreparable injury to the appellant, whereby, he would lose his rights in the land in question for the fault of not leading evidence in time and, therefore, the appellant may be granted one opportunity to lead evidence in the matter and he may be put to terms for the said purposes.

Learned counsel for the respondent vehemently opposed the submissions. It was submitted that the conduct of the appellant is writ large on record, wherein the appellant did not lead any evidence despite grant of sufficient opportunity by the court and, therefore, the closing of evidence and consequential dismissal of the suit cannot be faulted and, therefore, the appeal deserves to be dismissed.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

As noticed hereinbefore, the suit was filed on 05.10.2012 and the written statement was filed on 22.04.2013, however, after passage of over three and a half year, the trial court framed the issues and fixed the matter for evidence of the plaintiff. The matter remained pending for evidence of the plaintiff from 19.09.2016 to 02.06.2017 i.e. for over nine months, during which several opportunities were granted, however, the evidence was not produced.

The reason indicated regarding the counsel not appearing on few occasions and the appellant had to engage another lawyer is reflected from the order-sheets, however, even after engaging a new counsel and grant of time on two occasions, the evidence was not led, which conduct of the appellant cannot be justified as such. However, this is also a fact that the allegations made in the plaint, are such, which if the appellant is able to prove, apparently he has been deprived of the property, without consideration and/or by deceit on record and, therefore, apparently the case of the appellant requires an approach wherein, he is not deprived of the property without having an opportunity to make good his case in the suit.

The submissions made by counsel for the respondent in relation to the conduct of the appellant though are justified and cannot be supported, however, looking to the nature of allegations made in the plaint and the circumstances of the case, the appellant deserves one chance to lead evidence in support of the contentions raised in the plaint and for that purpose, the respondent can be compensated by way of costs.

In view of the above discussions, the appeal filed by the appellant is allowed. The judgment and decree dated 14.03.2018 passed by Additional District Judge, Jaisalmer is set aside. The orders dated 02.06.2017 and 14.07.2017 passed by the trial court closing the evidence of the appellant are also set aside, the matter is remanded back to the trial court with the direction to afford an opportunity to the plaintiff to lead evidence. The defendant would also be entitled to lead evidence. The parties shall appear before the trial court on 05.10.2020.

It is expected of the trial court to decide the suit expeditiously preferably within a period of nine months from the date the parties first appear before the trial court.

It would be required of the appellant to pay cost of Rs.10,000/- to respondent No. 1/counsel for the respondent No.1 before the date fixed before the trial court.

In case the cost is not paid, the order passed by this court would stand recalled.

The record of the trial court be send back immediately. No order as to costs.