
(2012) 05 RAJ CK 0053

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8424 of 2008; Civil Miscellaneous Stay
Application No. 1769 of 2008

Shri Gajendra @ Gajanand

APPELLANT

Vs

Shyamlal Jha and Others

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 16
Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 65

Citation : (2012) 2 WLN 548

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Bhagwati, J.—Counsel for the petitioner argued before the Court, but refused to disclose his name. This statement is recorded at the bar. Challenge in this writ petition is to the order dt. 22.07.2008, whereby Civil Judge (Jr. Division), Nasirabad dismissed the application filed by the petitioner-defendant No. 2 under Sec. 65 of Indian Evidence Act.

2. Shorn of unnecessary details, the facts of the case are that the plaintiff-respondent No. 2 filed a suit for eviction against the petitioner-defendant No. 2. During the pendency of the suit, the petitioner-defendant No. 2 filed an application under Sec. 65 of Evidence Act to take the photostat copy of the letter dt 03.10.1994 on record, which was dismissed by the learned trial Court vide order dt. 22.07.2008.

3. Having heard the learned counsel for the parties and carefully scanned the relevant material on record including the relevant provisions of law, it is noticed that learned trial Court dismissed the application observing that no evidence was produced by the defendant No. 2-petitioner showing that the document in question was in power and possession of the plaintiff-respondent nor did he

prove that the plaintiff-respondent was legally bound to produce the same. The learned trial Court also observed that it was not proved that either the original document was lost or damaged. E Converse, the plaintiff canvassed before the trial Court that the original document was not in his power and possession and the application filed by the defendant-petitioner under Order 11 Rule 12 and 16 had already been dismissed by the trial Court vide order dt. 10.12.2007.

4. It is for the party desiring to produce secondary evidence to prove the loss of the original, and it must do so to the satisfaction of the Court. The question whether original had been lost is to be decided by the trial Court, and is treated as depending very much on the discretion of the trial judge. His conclusion should not be overruled, except in a very clear case of miscarriage of justice. The question, whether the non production of the original is due to loss, or any other sufficient reason, not arising from his own default or neglect, is one of fact. It is for the Court to see as to whether the document, which has been tendered in evidence, is a genuine and admissible in evidence or not under the provisions of Indian Evidence Act; whether a document falls within the category of secondary evidence or not is not required to be adjudicated while invoking inherent jurisdiction by this Court under Art. 227 of the Constitution.

5. The impugned order passed by the learned trial Court is found to be just and apt. It does not suffer from any legal infirmity and thus, the same warrants no intervention of this Court.

6. This writ petition has been filed under Art. 227 of the Constitution of India. In the case of Shalini Shyam Shetty and Another vs. Rajendra Shankar Patil reported in (2010) 8 Supreme Court Cases 329, their Lordships of Hon"ble Apex Court have held that the power under Art. 227 of the Constitution of India is a reserved and exceptional power for judicial intervention to be exercised not merely for the grant of relief in any even of the case, but only to be directed for the promotion of public confidence in the administration of justice. It has been held that the power is unfettered, but subject to high degree of judicial discipline and interference is to be kept at the minimum.

7. For the reasons stated above, the writ petition filed by the petitioner being bereft of any merit deserves to be dismissed, which stands dismissed accordingly. Consequent upon the dismissal of writ petition, the stay application, filed herewith, does not survive and that also stands dismissed.