

(2002) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Revision Petition No. 996 to 999 of 2001

Smt. Shanti Devi and Others

APPELLANT

Vs

Urban Improvement Trust

RESPONDENT

Date of Decision : 13-05-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 151

Citation : (2002) 5 WLN 22

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—These four revision petitions involve common question of law and facts and, therefore, for convenience," they are disposed of by this common order.

2. These revision petitions u/s 115 of the CPC are filed by plaintiff petitioners against the orders dated 7.8.2001 passed by learned Addl. Civil Judge (Jr. Div.) and Judicial Magistrate No. 1, Jodhpur (hereinafter referred to as "the trial Court") in Civil Original Suits No. 97/98, 95/98, 98/98 and 96/98 filed by Smt. Shanti Devi, Smt. Jyoti Devi, Smt. Kanti Devi and Smt. Laxmi Devi respectively against the respondent Urban Improvement Trust, Jodhpur (for short the U.I.T.) where by the trial Court dismissed the applications filed by aforenoticed plaintiff petitioners under Order 11 Rules 12 and 14 read with Section 151, C.P.C.

3. I have heard learned Counsel for the parties. Perused the orders impugned.

4. It is contended by learned Counsel for the petitioner that u/s 72 of the Urban Improvement Trust Act, 1959 (for short "the Act"), it is mandatory that for construction of a building on the land falling within the jurisdiction of respondent U.I.T., a written permission/sanction for the construction of the building is obtained. It is further contended that the plaintiff petitioners applied for permission to construct the building but same has not been granted by the

respondent U.I.T. by a written order. However, there is a provision in the Act that if permission is not granted within stipulated period, permission would be deemed to have been granted. The plaintiff petitioners by applications sought production of documents, which they alleged to have filed alongwith the application seeking permission to construct the building.

5. Learned Counsel for the respondent contended that the petitioner have not mentioned details of the documents, which are alleged to have been filed by them alongwith the applications seeking permission to construct the buildings. Petitioners failed to place on record any material to show that they had filed the applications before the respondent seeking permission for construction of buildings. Not only this, in the applications the petitioners have not stated nature and contents of the documents, which are alleged to have been filed by them. He lastly contended that in order to delay the trial of the suit the petitioners have filed frivolous applications so that the matter can be delayed.

6. The applications filed by the petitioners are not supported by affidavits. In the applications, the petitioners have not disclosed the nature and number of the documents, which are alleged to have been filed by them alongwith the applications. The petitioners have also not disclosed as to how those documents are relevant.

7. The trial court after having considered the facts and circumstances of the case, refused to exercise discretion vested in it for discovery and production of the documents, as the applications are completely vague and lack requisite information. The trial court observed that it is not necessary to order for the discovery and production of the documents at this stage of the suit. It is the petitioners, who allege to have filed all the documents alongwith the applications seeking permission, are expected to know the nature and contents of their documents as also its numbers. Not only this, the applications seeking production of the documents are not accompanied by affidavits. This Court in Ravindra Bal Niketan Samiti, Sikar and Others Vs. Smt. Sushila Shrivastava and Another, held that application for production of documents should ordinarily be accompanied with affidavit. The plaintiff petitioners have even prima facie failed to satisfy the trial court about the nature and contents of the documents, production of which is sought and which are in the possession of the respondent. The Hon"ble Supreme Court in Central Bank of India Vs. M/s. Shivam Udyog and others, held that the application under Order 11 Rule 12 C.P.C. filed by the defendant to summon departmental proceedings against Bank employees allegedly initiated for creation of the mortgage, as in case of the mortgage being found not to have been created by the applicant-defendant, the Court would lack jurisdiction to try the suit. Their Lordships further held that it was not necessary to summon the disciplinary proceedings pending against the Bank official even if one of the charges is that the security furnished by the defendant was fictitious. It could be established by leading evidence and cross-examining the witnesses. The defendants have by this method attempted to delay the proceedings.

8. It is settled law that orders granting or refusing production of documents are discretionary orders and such orders ordinarily will not be interfered with in revision. The scope of revision u/s 115, C.P.C. is very limited. The revisional court cannot act as a court of appeal and re- appreciate the evidence. The revisional jurisdiction is very limited and it is to the extent of correction of jurisdictional errors.

9. In Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, Constitution Bench of the Hon'ble Supreme Court held that the High Court cannot while exercising its jurisdiction u/s 115 C.P.C. correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

10. Section 115 C.P.C. came to be amended by Act No. 104 of 1976 whereby Sub-sections (1) and (2) were inserted, which provide that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except.

(a) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

11. Learned Counsel appearing for the petitioners neither pointed out any jurisdictional error in the orders impugned nor pointed out how the orders impugned if allowed to stand, Would occasion a failure of justice. Having considered the rival submissions of the parties, I am of the considered opinion that the orders impugned do not suffer from any jurisdictional error.

12. In this view of the matter, I am of the considered opinion that the orders impugned of the trial court cannot be said to be without jurisdiction or suffer from any jurisdictional error or it would occasion any failure of justice.

13. In view of the aforesaid discussion, I find no merit in these revision petitions. Accordingly, they fail and are dismissed. No order as to costs.