

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Khemraj

C.A.No.106 of 2000

(Dr. A. S. Anand , C.J., R. C. Lahoti and N. Santosh Hedge JJ.)

10.01.2000

ORDER

A.S. ANAND, J.

1. Leave granted.

2. Though this case has a chequered history, but at this stage we are only concerned with an order made by the trial court on 21st January, 1997 on an application filed by the appellants under Section 65 of the Evidence Act to produce secondary evidence in respect of a map, the attested copy of which had been filed with that application. The learned trial court recorded that the application seeking permission to lead secondary evidence under Section 65 of the Evidence Act was not supported by any affidavit and also that the averments contained in the application were vague. It was on account of these deficiencies that the learned trial court rejected the application filed under Section 65 of the Evidence Act. The High Court, in revision, did not interfere with the order of the trial court on 1.2.1999. Hence, the appeal by special leave.

3. In the face of the pleadings of the appellants and the defects noticed by the trial court, no fault

can be found with the orders of the trial court or of the High Court. However, it appears appropriate to us, in the interest of justice, to permit the appellant to file a fresh application in the trial court for seeking permission under Section 65 of the Evidence Act to lead secondary evidence supported by a proper affidavit and giving full details necessary to attract the provisions of Section 65 of the Evidence Act.

4. In the event such an application is filed within four weeks, the same shall be disposed of afresh on its own merits, by the learned trial court uninfluenced by its earlier order dated 21.1.1997 or the order of the High Court dated 1.2.1999.

5. The appeal is disposed of in the above terms. No costs.