

**SUPREME COURT OF INDIA**

Lekhraj Bansal

Vs.

State of Rajasthan & Anr.

C.A.No... of 2014

(T.S.Thakur and C.Nagappan,JJ.,)

25.02.2014

**JUDGMENT**

**C.Nagappan,J.,**

1. Leave granted.
2. These appeals are directed against the judgment and decree dated 3.2.2004 passed by learned single Judge of the High Court of Rajasthan in Civil Second –
3. Appeal No.455 of 2000 and also against the review order dated 9.2.2005 passed in Civil Review Petition No.3 of 2004, thereof.
4. The appellant was employed as a Lecturer in a Higher Secondary School in Ajmer and he filed civil suit No.332 of 1987 on the file of Additional Munsif and Judicial Magistrate, Ajmer (West), seeking for a declaration that his correct date of birth is 28.8.1945 and the correct date of birth be deemed to be amended in his service book. The suit was resisted and the trial court dismissed the same on merit. The plaintiff preferred appeal in Civil Regular Appeal No.30 of 1990 on the file of Additional District Judge-2, Ajmer along with an application under Order 41 Rule 27 CPC to receive additional documents and the appellate court dismissed both the appeal as well as the application. Challenging the same the appellant/plaintiff preferred Civil Second Appeal No.455 of 2000 on the file of High Court of Judicature for Rajasthan at Jaipur Bench. The High -
5. Court dismissed the second appeal at admission stage by judgment dated 3.2.2004. The appellant filed review petition No.3 of 2004 and that also came to be dismissed by order dated 9.2.2005. Challenging the judgment as well as the review order passed by the High Court the present appeals are preferred.
6. Mr. Calla, the learned senior counsel appearing for the appellant submitted that the document showing the date of birth of the appellant though filed was omitted to be exhibited during the trial of the suit and the application for production of additional evidence in the

appellate court came to be erroneously rejected and the High Court has failed to appreciate the same in proper perspective and hence the impugned judgment is liable to be set aside.

7. Per contra, the learned Additional Advocate General contended that the document which the appellant sought to bring on record was very much in his -

8. possession even during pendency of the suit but it was neither tendered nor got exhibited in evidence during the examination of the witnesses and courts below have rightly rejected the application.

9. The case of the appellant is that his date of birth has wrongly been recorded in his service book as 20.5.1943, whereas his correct date of birth is 28.8.1945 and he sought for a declaratory relief to the said effect. It is needless to say that the burden is on the plaintiff to prove the case pleaded by him. As observed by the courts below the appellant in his oral testimony as plaintiff has not stated that his actual date of birth is 28.8.1945. He also failed to produce any document to prove that his correct date of birth is 28.8.1945 which resulted in the dismissal of the suit by the trial court. During the pendency of the appeal, he filed an application under Order 41 Rule 27 CPC for taking on record the date of birth certificate issued by the Municipal Council, Ajmer.

10. The parties to an appeal shall not be entitled to produce additional evidence in the appellate court unless the conditions stipulated under Order 41 Rule 27 CPC are satisfied. It is not the case of the appellant that the trial court had refused to admit the said evidence which ought to have been admitted. It is also not the case of the appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the trial court. On the other hand it is vehemently contended that the said evidence namely the document was filed but was omitted to be tendered in evidence and got exhibited in the suit. The lower appellate court elaborately considered the factual matrix and held that the appellant has not satisfied any of the conditions stipulated under Order 41 Rule 27 and hence is not entitled to produce additional evidence. In our view the said finding has rightly been confirmed by the High Court.

11. There are no merits in these appeals and the same are dismissed. No costs.