

SUPREME COURT OF INDIA

Ram Rati

Vs.

Mange Ram

C.A.No.1684 of 2016

(Kurian Joseph and R.F.Nariman,JJ.)

23.02.2016

JUDGMENT

Kurian Joseph, J.

S.L.P. (C) 22141 of 2013

1. Leave granted.

2. There are two suits filed by the respective parties and pending before the Tis Hazari Courts at Delhi. Civil Suit No. 43 of 2009 was filed by the respondents herein for declaration and injunction in respect of the plaint schedule property. In respect of very same property, the appellant herein also filed a suit seeking permanent injunction and that suit has been numbered as Civil Suit No. 44 of 2009. The suits were consolidated on 26.09.2005. Much before that, evidence in Civil Suit No. 44 of 2009 had commenced and the appellant herein had been examined as PW1 and the respondents herein had cross-examined PW1 as well. That evidence was closed on 16.04.2005. After the consolidation of the two suits, the respondents herein filed an application on 13.04.2010. We shall extract the averments made in the said application as under:-

"Application on Behalf of Defendant for Discharging the Statement of Pw-1 And Examination Of Witness I.E. Pw-1 Afresh Under Order 18 Rule 7 Cpc Read With Section 51 C.P.C.

Sir,

The applicant most respectfully submits as under:-

1. That the plaintiff examined PW- 1. Sh. Chottu Ram as PW-1 on 6.12.2004. His cross examination was concluded on 16.4.2005.

2. That this Hon'ble Court consolidated the present suit was another suit titled as *Mange Ram Vs. Chander Kanta* etc. vide its order dated 8.12.2007.

3. That while passing the order of consolidation dated 8.12.2007, this Hon'ble Court ordered as under:-

"It has been so urged on behalf of both contesting sides that trial in two cases be conducted commonly and evidence led in either case be read in both these cases."

4. That directions or observations of this Hon'ble Court as reproduced above operates prospectively and not retrospectively.

5. That when the Hon'ble Court ordered that evidence in one case may be read in evidence in another case, then plaintiff in *Mange Ram Vs. Chander Kanta & ors.* would be deprived of the opportunity of cross examination of PW-1 which was concluded on 16.4.2005, much prior to the date of order of consolidation.

6. That as per settled position of law on this point and as per terms of order of this Hon'ble Court dated 08.12.2007, either the PW1 be examined afresh or opportunity to cross examine the PW-1 may be granted to the applicant/plaintiff in *Mange Ram Vs. Chander Kanta and ors.* It is, therefore, prayed that PW-1 may kindly be examined afresh or opportunity to cross examine the PW1 in *Ram Rati Vs. Mange Ram* etc. may kindly be granted to the applicant."

3. By order dated 15.04.2008 of the Additional District Judge, Delhi in Civil Suit No. 43 of 2009 filed by the respondents, the suit as against Defendant Nos. 5 and 6 was rejected, holding that the plaint did not disclose any cause of action against them. Defendant Nos. 5 was the plaintiff in Suit No. 44 of 2009 and Defendant No. 6 is her husband. That Defendant No. 5 is the appellants before this Court.

4. Thus, the only ground taken up in the application filed under Order 18 Rule 17 CPC is that after consolidation of the suits, the plaintiff in Civil Suit No. 43 of 2009 should get an opportunity to cross examine the PW1 (Defendant No. 5 in Civil Suit No. 43 of 2009).

5. It is interesting to note that in the order dated 24.02.2010 passed by the Additional District Judge in Civil Suit No. 44 of 2009, consolidated with Civil Suit No. 43 of 2009, it has been noted by the Court that the plaintiff in Civil Suit No. 44 of 2009 is no more a party to Civil Suit No. 43 of 2009 and the earlier order of consolidation of suits dated 8.12.2007 was maintained, further clarifying that the past evidence of plaintiff in Civil Suit No. 44 of 2009, which has already been recorded, to be treated as the main suit.

6. We shall extract the order dated 24.02.2010, which reads as follows:-

"Since the facts in this suit and suit No. 43/09 are intertwined even though Plaintiff is no more a party to suit No. 43/09, her claim for declaration to suit property therein

may have reflection on the entitlement of Plaintiff, therefore, with the consent of both sides, the consolidated order dated 8.12.2007 is being maintained and suit No. 44/09 wherein past evidence of Plaintiff Ram Rati has been recorded is treated as main suit."

7. Unfortunately, those crucial aspects apparently have been missed by the trial court and the High Court while passing the impugned orders.

8. In that view of the matter, it is not necessary to us to go into the various other contentions regarding the permissibility of recalling under Order 18 Rule 17, though Mr. Pritesh Kapur, learned counsel appearing for the appellant has elaborated on those aspects as well.

9. In the above circumstances, the impugned order is set aside and the appeal is allowed.

10. We are informed that during the pendency of the appeal, the evidence has been closed and what remains is only the final order to be passed. In view of the above, we direct the trial court to dispose of the suits expeditiously and preferably within one month from the date of receipt of a copy of this order.

No costs.