

(2010) 1 WLN 289

Rajasthan High Court (Jaipur Bench)

Case No: None

Sheetal Prasad

APPELLANT

Vs

Addl. District Judge No.
1 and Another

RESPONDENT

Date of Decision: Nov. 19, 2009

Acts Referred:

- Constitution of India, 1950 - Article 227
- Evidence Act, 1872 - Section 65

Citation: (2010) 1 WLN 289

Hon'ble Judges: Narendra Kumar Jain, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Narendra Kumar Jain, J.

Heard learned Counsel for the petitioner.

2. The plaintiff has preferred this writ petition under Article 227 of the Constitution challenging the impugned order dated 22nd April, 2004 passed by Additional District & Sessions Judge No. 1, Ajmer in Civil Suit No. 139/1997 rejecting his application dated 12th March, 2004 u/s 65 of the Evidence Act to allow him to produce secondary evidence in respect of 23 + 1= 24 documents, the details of which were mentioned in the application.

3. The plaintiff filed a suit for declaration in the trial court against the defendant-respondent No. 2 to declare that his father Mohan Lal was adopted son of Prabhu Lal, therefore, he is entitled to inherit the property left by Prabhu Lal. During the pendency of the suit, an application u/s 65 of the Evidence Act was filed by the petitioner, which was contested by defendant by filing written reply. The learned trial court vide its order dated 22nd April, 2004 rejected the said application. Being aggrieved with the

same, the plaintiff has preferred this writ petition.

4. The submission of the learned Counsel for the petitioner is that the documents filed with the application are certified copies of the record issued by judicial court itself. The documents had already been filed earlier in the suit. The court concerned summoned the record, but a report was received from Central Record Section that the record has been destroyed by the termites. The another report for one document is that original file has not been received back in the record. It is contended that since original record lying with the court itself is not traceable or destroyed then petitioner should have been allowed to file secondary evidence in this regard. So far as genuineness of the documents are concerned, no doubt can be created as all documents are certified copies of the originals. He, therefore, contended that the trial court committed illegality in rejecting his application.

5. No one is present on behalf of defendant-respondent despite service of notice.

6. I have considered the submissions of the learned Counsel for the petitioner and examined the impugned order passed by the trial court as well as other documents placed on record with the writ petition. The plaintiff filed an application dated 12th March, 2004 mentioning therein that 23 documents as mentioned in the application were filed by him in another suit No. 73/70 (Sheetal Prasad v. Radha Mohan) and one document was filed in Civil Misc. Application No. 5/1949 (Kailash v. Prem Narain). It appears that certified copies of these documents are available and the same were filed in the trial court. There cannot be any doubt on the genuineness of these certified copies of the documents as the same have been issued by the judicial court itself. Looking to the report made by Central Record Section, the trial court should have allowed the application of the petitioner. In these circumstances, I am of the view that the trial court committed an illegality in passing the impugned order, which is liable to be set aside by this Court.

7. Consequently, the writ petition is allowed. The impugned order dated 22nd April, 2004 passed by the trial court is set aside. The application dated 12th March, 2004 filed by the petitioner u/s 65 of the Evidence Act is allowed, the documents annexed therewith be allowed in evidence as secondary evidence. The parties are directed to bear their own cost.