Bhallu Singh and Ors. Vs Jokhan Singh & Ors.

Civil Revision No. 59 of 2006

Court: Allahabad High Court

Date of Decision: Feb. 16, 2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 18 Rule 16, 115

Hon'ble Judges: Poonam Srivastava, J

Final Decision: Dismissed

Judgement

Mrs. Poonam Srivastava, J.
Heard Sri V.K. Mishra and Sri R. Risen, learned Counsel appearing for the revisionists.

2. The order dated 13122005 is impugned in the instant revision, whereby an application under Order 18 Rule 16 C.P.C. has been allowed by

learned Additional Civil Judge (Senior Division), room No. 13, Allahabad in original suit No. 960 of 2004, Bhallu Singh v. Smt. Sadhana Singh &

Ors. On 2992005, the defendant No. 3 moved an application for recording his statement immediately, which was numbered as 21C. A copy of

the same has been annexed as Annexure No. 3 to this revision. On perusal of the said application shows that a request was made that since the

defendant No. 3 is very old man and therefore, his evidence may be recorded prior to evidence of other witnesses. A copy of the plaint has been

annexed as Annexure No. 1 to this revision. In paragraph No. 5 of the plaint, it has been stated that age of the defendant No. 3 Jokhan Singh is

about eighty years and he is at the verge of collapse. On account of his old age and habit of drinking, he is not mentally fit. Allegation regarding

mental faculty of the defendant No. 3 was disputed in the written statement but his old age being more than eighty years has clearly been admitted.

Considering this admission by both the parties and also request made on behalf of the defendant No. 3 to be examined before the other witnesses

clearly substantiate requirement of Order 18 Rule 16 C.P.C. and the Court below allowed the said application coming to a conclusion that the

defendant No. 3 is very old and it cannot be said how long will he survive. Taking this fact into consideration, it was found appropriate that he

should be examined immediately.

3. Learned Counsel for the revisionists has tried to emphasize that it is not a case where the witness was to leave the jurisdiction of the Court,

therefore, there was no question for allowing the said application. I am not in agreement with the argument advanced by the Counsel appearing for

the revisionists since Rule 16 Order 18 C.P.C. provides that where a witness is about to leave the jurisdiction of the Court or ''other sufficient

cause'' is shown to the satisfaction of the Court why his evidence should be taken immediately. The Court may allow such an application and take

evidence of such matter immediately. In the circumstances, it is discretion of the Court to come to a conclusion that whether there is sufficient cause

or not to examine the witness immediately. In the event, the Court is satisfied and exercised discretion in favour of the witness to be examined

immediately, it does not call for any interference whatsoever. In fact, the order to examine the witness immediately is also not amenable to the

jurisdiction of Section 115 C.P.C. as it is not an order, which can be said to be a ''case decided''.

4. The Court below has exercised his jurisdiction and nothing has been brought to my notice that the discretion exercised by the Court below is not

a judicial discretion. It has not been pointed out by the Counsel appearing for the revisionists that how and in what manner, the impugned order has

occasioned failure of justice or it would cause irreparable loss to the revisionists. In the circumstances, I do not find any merit in the instant revision

and is, accordingly, dismissed.

5. There shall be no order as to costs.

Revision dismissed.