
(2014) 04 AHC CK 0277

Allahabad High Court

Case No: Writ-C. No. 22855 of 2014

Satbeer Singh

APPELLANT

Vs

Addl. Commissioner

RESPONDENT

Date of Decision: April 22, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11, Order 7 Rule 14
- Evidence Act, 1872 - Section 66

Citation: (2014) 106 ALR 511 : (2014) 125 RD 671

Hon'ble Judges: Ram Surat Ram (Maurya), J

Bench: Single Bench

Advocate: K.N. Rai and Vijay Anand Rai, Advocate for the Appellant; Ajay Kumar Srivastava, Mahesh Narain Singh and S.K. Srivastava, Advocate for the Respondent

Judgement

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Ram Surat Ram (Maurya), J.

Heard Sri K.N. Rai for the petitioners and Sri Sanjay Kumar Srivastava for the contesting respondents. This writ petition has been filed against the order of Trial Court dated 10.1.2013 by which the Court has summoned Register No. 8 from the Office of Sub Registrar and the order dated 12.3.2014 dismissing the revision of the petitioner against the aforesaid order. A suit under section 229-B has been filed by Satya Veer (respondent-4), claiming his title on the basis of a registered Will dated 14.1.1991, executed by Nihal Singh in his favour. On the allegation that the original will was given to Smt. Prakaso and she was not returning the original will therefore, the certified copy of the Will was filed and in order to prove the genuineness of the certified copy of the Will, Register No. 8 relating to the Will as well as one sale-deed dated 22.6.1988 executed by Nihal Singh was summoned. The Court below by the order dated 10.1.2013 summoned

the aforesaid registers. The revision filed by petitioner has been dismissed against it.

2. The Counsel for the petitioner submits that the notice as required under section 66 of the Evidence Act, has not been given to Smt. Prakaso, as such, secondary evidence was not admissible. He further submits that the Will was the basis of the suit, as such, the will was required to be filed alongwith the plaint under Order VII, Rule 14, C.P.C., but it has not been filed. In such circumstances, neither the suit was maintainable, nor the secondary evidence can be permitted to be filed by the respondents.

3. I have considered the arguments of Counsel for the petitioner and examined the record.

4. So far as Order VII, Rule 14 is concerned, it is directory in nature and mere not filing of the basis of the suit alongwith the plaint does not give right for rejection of the plaint under Order VII, Rule 11, C.P.C.. In such circumstances, the maintainability of the suit is not affected by not filing the basis of the suit alongwith the plaint.

5. So far as the next argument raised by the Counsel for the petitioner that no notice as required under section 66 of the Evidence Act has been given to Smt. Prakaso, as such, secondary evidence was not admissible is concerned, I have examined the objection raised by the petitioner before the Court below and no objection was raised. What is the factual position in this respect cannot be substantiated without raising any objection before the Court below. Since by the impugned order, merely the evidence as required by the plaintiff respondent were summoned by the Court below, as such, it does not cause any prejudice to the petitioner. No interference is required by this Court.

6. The writ petition has no merit and is dismissed. However, it is made clear that this Court has not decided the admissibility of the documents at this stage and any observation made in this order will not affect the petitioner to raise his objection before the Court below.