

(2017) 03 MP CK 0101

MADHYA PRADESH HIGH COURT

Case No: 10982 of 2014

Kallu @ Devendra

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: March 23, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Order 7 Rule 14 -
- Evidence Act, 1872, Section 145, Section 45 - Cross-examination as to previous statement

Hon'ble Judges: Sanjay Yadav

Bench: Single Bench

Advocate: Vivekanand Awasthi, Anoop Kumar Saxena

Judgement

1. Petitioners/defendants No.1, 4 and 5 take exception to orders dated 18.02.2014, 26.02.2014 and 07.05.2014 passed in Civil Suit No.17-A/2011.
2. By order dated 18.02.2014 and 26.2.2014 trial Court allowed plaintiff's application under Order 7 Rule 14 of the Code of Civil Procedure 1908; whereas, by order dated 7.5.2014 trial Court dismissed petitioner's application under Section 45 of the Indian Evidence Act and declined to refer the document which was allowed to be taken on record by order dated 18.2.2014 and 26.2.2014 for examination by an expert.
3. These three orders emanates from the proceedings dated 13.2.2014 whereon the defendant No.1 Mst. Ramkuawar, since deceased, during her cross examination was confronted with a document which was in possession of the counsel for the plaintiff and was called upon to identify the signature thereon to be her's. Defendant admitted her signature. However on an objection raised by the counsel for defendants, the permission to exhibit said document was declined. The proceedings

give interesting reading :

"VERNACULAR MATTER OMITTED"

4. To overcome the hindrance from exhibiting the document in question plaintiff filed an application under Section 145 of the Evidence Act and sought leave from the trial Court to confront the witness with the document in question. The application was allowed by order dated 18.2.2014 and by order dated 26.2.2014 allowed the said document to be taken on record.

5. Interestingly, on both occasions i.e. while passing order dated 18.2.2014 and 26.2.2014, the trial Court recorded a finding that the plaintiff has not given any cogent explanation as to why the document was not filed earlier or leave was not sought.

6. While deciding application under Section 145 on 18.2.2014, the trial Court recorded:-

"VERNACULAR MATTER OMITTED"

7. Yet the trial Court went on to allow the applications. Section 145 of the Indian Evidence Act, 1872 envisages that ?a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

8. Thus, previous statement of a witness can be used under this section only for the limited purpose of contradicting the evidence given by that witness in Court. It cannot be used as positive evidence. Contradictions comprise of two conflicting versions of witness, one in a statement earlier recorded and the another before Court. In the case at hand, as evident from the proceedings dated 13.02.2014 that the plaintiff intended to extract a positive evidence instead of extracting the contradiction. The trial Court was therefore, not justified in allowing the application under Section 145 of the Act of 1872 to enable the plaintiff to extract a positive evidence. The impugned order is thus, not sustainable. Furthermore, the application under Order 7 Rule 14 of CPC to enable the plaintiff to file a document to extract a positive evidence from the defendant in cross-examination is also not justified. Consequently, the order taking document on record is setaside.

9. In view whereof, since the order dated 18.02.2014 and 26.02.2014 are set-aside, the application filed by the petitioner under Section 45 of the Act of 1872 is rendered redundant.

10. In the result, the petition is allowed to the extent above. There shall be no costs.