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MADANLAL

v.

SHYAMLAL

NOVEMBER 9, 2001

B

[M.B. SHAH AND R.P. SETHI, JJ.]

*Code of Civil Procedure, 1908 :*

C

*S.115, Order 13, Rule 2—Production of Documentary evidence—Suit for specific performance—Defendant after evidence of plaintiff was closed, filing application under Order 13, Rule 2 for production of certain documents—Trial court rejecting the application observing that defendant neither submitted his own affidavit nor made out a good cause for late production of documents—Revision/Petition of defendant dismissed by High Court—Held, there cannot be any serious objection to production of such documents which cannot be doubted—*

D

*At the most plaintiff should be given an opportunity to lead evidence in rebuttal but that could be done by the court at appropriate stage—However, in the instant case, the cause shown by defendant was not considered to be a “good cause” as provided under Order 13 Rule 2—It is true that power under Order 13, Rule 2 could be exercised liberally and that “good cause” requires lesser degree of proof than that of “sufficient causes”—May be that order is erroneous, however, it cannot be said that such order passed by trial court could be interfered with under s.115—It cannot be said that trial court has acted with material irregularity in exercise of its jurisdiction in rejecting the applications filed by defendant and that the order, if allowed, would occasion a failure of justice—The words “material irregularity in exercise of jurisdiction” do not cover either errors of fact or law—Revision.*

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*Arjun Singh v. Mohindra Kumar and Ors., AIR (1964) SC 993 and Keshardeo Chamria v. Radha Kissen Chamria and Ors., [1953] SCR 136, referred to.*

G

*Words and Phrases :*

*Words “Good cause” and “sufficient cause”—Connotation of Words “material irregularity in exercise of jurisdiction”—Connotation of.*

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7810 of 2001.

From the Judgment and Order dated 27.2.2001 of the Rajasthan High Court in S.B.C.R. No. 216 of 2001.

B.D. Sharma for the Appellant.

Ms. Shobha for M/s. K.L. Mehta & Co. for the Respondent.

The following Order of the Court was delivered :

Leave granted.

This appeal is filed against the the judgment and order dated 27.2.2001 passed by the High Court of Rajasthan at Jodhpur in S.B. Civil Revision No. 216 of 2001.

The facts of the case are that—respondent filed a civil suit for specific performance of agreement to sell, dated 1.8.1992, of agricultural land and residential plot for a consideration of Rs. 1.50.000. Appellant submitted written statement on 18.1.1996 and denied that he was executed any such agreement to sell in favour of the respondent and that respondent has misused his signatures taken on the blank stamp paper. After the evidence of witnesses of the respondent was recorded, appellant filed application under order 13 rule 2 of CPC for production of copy of the award passed by the Land Acquisition Officer regarding the acquisition of one bigha of agricultural land in dispute, electricity bill of his house and copy of the registered sale deed executed by the petitioner on 9.2.1987 in favour of one Nathu Ram pertaining to 900 sq. yds. of land which is also part of the suit property. Those applications filed by the appellant were rejected by the trial court vide its judgment and order dated 11.1.2001 on the ground that plaintiff has closed his evidence and that defendant has neither submitted his own affidavit nor has made out a good cause for late production of the said documents. That order was challenged before the High Court of Rajasthan by filing Revision Petition, which was rejected by impugned judgment and order dated 27.2.2001 by holding that there was no reference of the said documents in the written statement and no good cause was shown for its non production at the relevant time. The High Court also arrived at the conclusion that the trial court has nor committed any irregularity or error relating to jurisdiction in refusing to take the documents on record. Hence, revision was dismissed.

Appellant sought to produce certified copy of the order passed by the Land Acquisition Officer, registered sale deed and electricity bills. For the

A genuineness of these documents, there may not be any doubt. Only question is - as the documents were not produced at the relevant time before the settlement of the issues, whether he should be permitted to produce the same before his evidence is recorded. It is true that there cannot be any serious objection to production of such documents, which cannot be doubted. At the most, question would be - in rebuttal plaintiff should be given some opportunity to lead the evidence but that can be done by the Court at appropriate stage. It is the say of the appellant that the documents were given to one Palaram, a Law Graduate and his trusted person, for producing it before the Court but he has lost them and thereafter he has filed the applications after obtaining the certified copies. However, the learned counsel for the respondent has objected to the production of the said documents by raising various contentions, which are not required to be dealt with in this appeal.

D The cause shown by the appellant was not considered to be a "good cause" as provided under order 13 rule 2 CPC. It is true that power under order 13 rule 2 CPC could be exercised liberally and that "good cause" requires lesser degree of proof than that of "sufficient cause". (Re. *Arjun Singh v. Mohindra Kumar and Ors.*, AIR (1964) SC 993). May be that order is erroneous, however, it cannot be said that such order passed by the trial court could be interfered under Section 115 of CPC. It cannot be said that the trial court has acted with material irregularity in exercise of its jurisdiction in rejecting the applications filed by the appellant and that the order, if allowed, would occasion a failure of justice. The words "material irregularity in exercise of jurisdiction" do not cover either errors of fact or law. (Re. *Keshardeo Chamria v. Radha Kissen Chamria and Ors.*, [1953] SCR 136). It is open to the appellant to raise this contention at the appellate stage, if decree is passed against him.

Hence, appeal is dismissed with no order as to costs.

R.P.

Appeal dismissed.