

LALITHA J. RAI

v.

AITHAPPA RAI

APRIL 27, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908 :

Order 16—Rules 1 and 1(A)—List of witnesses—Furnishing of—Delay in—Party to give reasons—Application could be allowed if there are sufficient reasons for the delay, as there is no total prohibition.

In a suit filed by the appellant-Plaintiff, the plaintiff filed an application enclosing list of witnesses for summoning them for adduction of evidence to prove her case. As a general power of attorney holder, her husband filed an affidavit stating that he was under *bona-fide* mistaken impression that the list of witnesses was already filed, and therefore, the failure to file the list of witnesses was not intentional. The trial Court dismissed the application holding that there was no proper explanation for the delay. On revision, the High Court declined to interfere. Hence this appeal.

Allowing the appeal, this Court

HELD : 1. The legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the Court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 of Order 16. [863-B, C]

2. In the application it was stated by the husband of the appellant that they were under the *bonafide* impression that they had already filed the list of the witnesses alongwith the documents and that the mistake of non-filing the list was discovered when they were getting ready for the trial. It is not in dispute that the trial is yet to begin. The trial court committed illegality in refusing to receive the list for summoning the witnesses for adduction of evidence by the plaintiff. The orders of the trial court and the High Court are set aside. The list already furnished is a valid list. The trial

A court is directed to summon the witnesses for examination on behalf of the plaintiff. [863-C to E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5699 of 1995.

B From the Judgment and Order dated 20.9.93 of the Karnataka High Court in C.R.P. 2539 of 1993.

Ms. Sangeeta Agrawal and S.K. Kulkarni for the Appellant.

The following Order of the Court was delivered :

C Leave granted.

The appellant plaintiff laid the suit for declaration of title and for possession of the plaint schedule property. On August 3, 1993 the appellant filed an application enclosing the list of witnesses to issue summons to them for adduction of evidences to prove her case. In the affidavit filed by the husband, who is the general power of attorney holder, it was stated that he was under *bonafide* mistaken impression that the list of witnesses was already filed, but he noticed that mistake when he was getting ready, in consultation with the counsel, to adduce evidence at the trial. It was, therefore, stated that the failure to file the list of witnesses was not intentional. Accordingly, he sought permission of the court to file the list of witnesses. The trial court in its order dated September 6, 1993 dismissed the application holding that there is no proper explanation for the delay in filing the list of witnesses. On revision, the High Court of Karnataka declined to interfere with the order. Thus, this appeal by special leave.

F Order 16 Rules 1 and 1(A) adumbrate that the witness at the trial court are to be produced for examination by the parties by their filing the list, and omission thereon prohibits them to avail the assistance of the court to secure their attendance to give evidence or to produce documents on their behalf. It is true that the legislature amended Order 16 Rule 1 and added rule 1(A) to see that the undue delay should not be caused in the trial of the suit by filing list of witnesses or the documents at belated stage. Thereby, it envisages that on or before the date fixed by the court for settlement of issues and not later than 15 days after the date on which issues were settled, the parties are to file the list of such witnesses whom they propose to call either to give evidence or to produce documents and

they are required to obtain summons to such witnesses for their attendance in the court. On their failure to do the same, Rule (1)A says that they may without assistance of the court bring witnesses to give evidence or to produce documents. In other words, if they fail to obtain the summonses through court for attendance of witnesses they are at liberty to have the witnesses brought without the assistance of the Court.

It would, thus, be seen that the legislature did not put a total prohibition on the party to produce the witnesses or the production of the documents for proof of the respective case. Nonetheless, when they seek the assistance of the Court, they are enjoined to give reasons as to why they have not filed the application within the time prescribed under Rule 1 of Order 16. It is seen that in the application it was stated by the husband of the appellant that they were under the *bonafide* impression that they have already filed the list of the witnesses alongwith the documents and that the mistake of non-filing the list was discovered when they were getting ready for the trial. It is not in dispute that the trial is yet to begin. In these circumstances, we think that the trial court committed illegality in refusing to receive the list for summoning the witnesses for adduction of evidence by the plaintiff. The appeal is accordingly allowed. The orders of the trial Court and the High Court are set aside. The list already furnished is a valid list. The trial court is directed to summon the witnesses for examination on behalf of the plaintiff. No costs.

G.N.

Appeal allowed.