

**CS DJ No. 215291/2008  
Rakesh v. Bhole & Anr.**

**26.04.2023**

**At 02.20 p.m**

Present: Ld. Counsel for plaintiff.

Sh. Rattan Prakash, Ld. Counsel for defendants no. 1, 3 to 8,  
15, 16, 22 and 23.

Ms. Jyoti, ld. Counsel for defendant no. 12.

None for remaining defendants.

Since morning despite repeated calls, none has appeared on behalf of other defendants. The other defendants are accordingly proceeded ex-parte.

It is submitted by ld. Counsel for defendant no. 12 that defendant no. 12 had expired on 13.05.2021 and being a relative of the plaintiff, this fact was well within the knowledge of the plaintiff but till date, no steps have been taken for impleadment of LRs of defendant no. 12.

Ld. Counsel for plaintiff seeks time to take steps in this regard.

With regard to the previous cost, it is to be seen that a total cost of Rs.6000/- was imposed upon the plaintiff and on 08.01.2019, cost of Rs.3,000/- was imposed upon the defendant no. 12. Out of the cost of Rs.6000/-, half cost was to be paid to the defendant no. 12. However, in view of order dated 08.01.2019, the said amount need not be paid to

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defendant no. 12. Rs.3,000/- is paid to ld. Counsel for defendants no. 1, 3 to 8, 15, 16, 22 and 23.

The matter is at the stage of arguments on an application moved on behalf of the plaintiff for recalling of order dated 27.01.2023.

Ld. Counsels for defendants submit that they will not file any reply to the application and will straightaway argue the same.

It is submitted in the application that the matter was listed for PE on 27.01.2023. Two witnesses namely Jattan Singh and Ramkirt Sharma were to be examined. However, witness Jattan Singh was admitted in the hospital on 17.01.2023 and was discharged on 25.01.2023 and therefore, his examination in chief could not be prepared and even after his discharge, he was not in a position to come to the court and thus, this witness could not come to the court.

With regard to witness Ramkirt Sharma, it is submitted that this witness had gone to his native village due to some unavoidable circumstances and was not available and thus, his evidence could not be prepared. It is further submitted that the document reflecting that Ramkirt Sharma was at his native village would be filed at the time of hearing.

Ld. Counsel for defendants no. 1, 3 to 8, 15, 16, 22 and 23 submits that the matter was listed for PE in the year 2019 and since then despite opportunities being given, plaintiff had not concluded his evidence. He has further submitted that no documents have been shown even today with regard to non appearance of witness Ramkirt.

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I have considered the rival submissions and gone through the record.

With regard to witness Jattan Singh, there is a medical document on record which reflects that the witness was admitted in Yatharth Hospital on 17.01.2023 and was discharged on 25.01.2023. The said witness is aged about 72 years and thus, it is acceptable that being discharged after admission of 08 days, he would not have been in a position to come to the court on the given date and thus, his examination in chief could not have been prepared. Therefore, plaintiff deserves an opportunity for examining this witness.

However, with regard to witness Ramkirt Sharma, I find that the documents reflecting the urgency of going this witness to his native village have not been shown to the court. Thus, the grounds stated by the plaintiff cannot be accepted.

In view of the above discussion, the application of the plaintiff is allowed in part. One last and final opportunity is given to the plaintiff to examine witness Jattan Singh.

Put up for PE on 06.05.2023. Advance copy of affidavit of witness Jattan Singh be supplied to the opposite party seven days prior to the next date of hearing.

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