
(2013) 02 KL CK 0012
In the High Court Of Kerala
Case No : O.P. (C) No. 1911 of 2012

Anthoyokkya Viswasa Samrakshana Samithi

APPELLANT

Vs

Paulose

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14
Constitution of India, 1950 — Article 226

Citation : (2013) 1 ILR (Ker) 982 : (2013) 1 KHC 580 : (2013) 1 KLJ 671 :
(2013) 1 KLT 591

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : Mathews K. Uthuppachan and Biju C. Abraham, for the Appellant;
Saji Varghese (Kakkattumattathil), for the Respondent

Final Decision : Allowed

Judgement

A. Hariprasad, J.—Plaintiffs in O.S. No. 59/2011 on the file of the Munsiff Court, Kolencherry approached this Court with the Original Petition under Art. 226 of the Constitution of India challenging the order passed by the learned Munsiff in I.A. No. 474 of 2011 in the above suit. The application was filed by the defendants in the suit (respondents herein) under O. XI R. 14 C.P.C.. The suit is one for prohibitory injunction against the defendants from entering and causing damages to the plaint schedule property. Plaintiff is a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955. Brief facts, born out from Ext. P1 plaint, are the following. Petitioners claimed to be the President and Secretary of the plaintiff society. Objects of the society have been detailed in paragraph one of Ext. P1, Plaintiff purchased properties admeasuring 50 cents. President and Secretary of the plaintiff society are in possession and management of the properties. The property is described in plaint "A" schedule. Respondents in the Original Petition have no manner of right in Ext. P1 schedule properties. On 26.11.2011 they attempted to trespass into the property by causing damage to the boundary wall and improvements therein,

Hence the suit was filed.

2. Before filing a written statement in the suit, the defendants approached the Trial Court with the above mentioned interlocutory application for compelling the petitioners to produce minutes of a meeting held on 2.11.2011, whereunder the petitioners claimed right to hold the office. It is pertinent to note that the respondents in their affidavit filed in support of the interlocutory application vaguely contended that they are the persons entitled to manage the society. Nonetheless, the society is not functioning for some time. Petitioners got possession of documents pertaining to the society under dubious circumstances and they are likely to tamper with them. Hence the document should be produced before the court.

3. Learned Munsiff considered the rival contentions and allowed the application. Reasoning adopted by him is that the petitioners will not suffer prejudice or loss or hardship if the document is ordered to be produced.

4. Heard the learned counsel on both sides. Learned counsel for the petitioners submitted that the reasoning of the learned Munsiff in allowing the petition is not justifiable in law. According to him, the attempt of the respondents is to make a roving inquiry into matters unconnected with the questions in the suit.

5. It will be useful to extract O. XI R. 14 C.P.C. for clarity:

14. Production of documents.-- It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

On a plain reading of the above provision, following aspects are discernible. Power of the court to invoke the above provision is discretionary. It is subject to the following conditions being satisfied, viz; (i) the documents, production of which is sought for, must be in the possession or power of the party against whom the direction is sought (ii) the documents must relate to any matter in question in such suit and (iii) direction can be given only to a party to the suit and not to a third party. It also gives discretion to the court to deal with such documents, when produced, in such manner as shall appear just. It is indubitable that the court is having power to direct production of documents under the said provisions at any time during the pendency of the suit. An order for production of documents under this rule is different from an order for discovery under R. 12 or for inspection under R. 18.

6. Learned counsel for the petitioners argued that even before filing a written statement in the suit, the respondents approached the lower court with a petition under O. XI R. 14 C.P.C. and that was with an intention to make a fishing or roving enquiry, According to petitioners, the respondents are not entitled to file such a petition before delivering their defence. It is also contended that the

documents sought to be produced has no nexus with the matter in question in the suit.

7. Phraseology employed in O. XI R. 14 C.P.C. that "at any time during the pendency of any suit" cannot be limited or restricted to post written statement stage. It is evident that any party to a suit can approach the court under the said provision at any time during the pendency of the suit, seeking an order from the court for directing the other party to produce documents in his possession or power. However, this is subject to a further condition that the document sought to be produced must relate to any matter in question in such suit. This provision confers a discretionary power on the court with the sole object of doing justice. Hence no limitation or restriction can be read into the provision, especially when the language employed is very clear. Therefore there is nothing wrong in the respondents' filing such a petition before filing their written statement.

8. Learned counsel for the petitioners submitted that Ext. P1 plaint would show that the suit is for injunction simplicitor in respect of possession and management of immovable property belonging to the society. It is also contended that going by the averments in the affidavit in support of the application, it can be seen that the document sought to be produced is not necessary for deciding the question of possession of property. In a suit for injunction simplicitor with respect to immovable property, the cardinal question is whether the plaintiff is in possession of the property, as on the date of suit. In *E. Keshava Bhat Vs. K.S. Subraya Bhat*, , the point decided is the following:-

In suits for injunction, we are concerned only with the question of possession-the nature and the character of the possession is immaterial. If the plaintiff does not make out his possession, there is no need at all to consider whether the defendant is in possession, and if so, in what character or capacity;

9. It is interesting to note that the words "relating to any matter in question" employed in O. XI R. 14 C.P.C. occur in O. XI R. 12 C.P.C. also. Intend and purport of these words were considered by this Court in *Padmanabhan v. Kannan* (1980 KLT 22) and the law stated therein is as under:

8. Under O. XI R. 12, the court can direct any party to a suit to make discovery of documents "relating to any matter in question therein". The expression "matter in question" means a question or issue in dispute in the action and not the thing about which such dispute arises. See *Halsbury*, 3rd Edn. Vol. 12, Page 26; thus in a suit for recovery of land it means the plaintiff's alleged title, and not the land. And in a suit for injunction to restrain a defendant from entering upon plaintiff's land, it means the latter's possession. At any rate, the matter in question is not the land and all rights relating thereto.

10. Although there are differences in the manner in which pleas are to be raised and orders are to be passed under R. 12 and R. 14 of O. XI C.P.C., the words "relating to any matter in question therein" occurring in R. 12 and "relating to any matter in question in such suit" seen in R. 14 of O. XI C.P.C. convey the very

same idea. In both provisions, it is essentially required that the document to be discovered or produced must be one relating to the matter in question in the suit. Therefore, the principle in Padmanabhan's case (supra) stated under O. XI R. 12 C.P.C. is applicable in the context of O. XI R. 14 C.P.C. also.

11. From the above discussion, it is discernible that the power under O. XI R. 14 C.P.C. can be invoked by the court on the application of any party to the suit and at any stage during the pendency of the suit. The documents sought to be produced must be in the possession or power of the other party and it must relate to any matter in question in such suit. The provision empowers the court to deal with such documents, when produced, in such manner as shall appear just. In other words the document, when produced, if found to be inadmissible, then the court is having sufficient power to reject it at the appropriate time.

12. Affidavit filed by the respondents before the court below disclose no specific reason, pertinent in this context, for compelling the petitioners to produce the document. Nowhere it is mentioned in the affidavit that the document sought to be produced is relevant for the determination of question involved in the suit, viz; possession of immovable property. Therefore, the learned Munsiff was not right in allowing the petition. Learned counsel for the respondents submitted that their right to seek production of the document under the above provision at the appropriate time should be reserved. It is clear from the provision itself that the respondents are entitled to seek production of the document, if at a later point of time, the court finds that the document does relate to any matter in question in the suit. Denial of their request at this point of time and that too for want of legal reasons for cause of production will not be a bar if the conditions in the provision are satisfied at a later point of time.

For the reason stated above, this Court finds that the impugned order is unsustainable in law. Therefore, the Original Petition is allowed. The impugned order is set aside. The parties are directed to suffer their costs.