

(1955) 12 MAD CK 0012

In the Madras High Court

Case No : Civil Revision Petition No. 1255 of 1955

Bagyalakshmi Ammal and Others

APPELLANT

Vs

Srinivasa Reddiar

RESPONDENT

Date of Decision : 16-12-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 14, Order 11 Rule 15, Order 11 Rule 18, Order 11 Rule 18(2), Order 11 Rule 20

Citation : AIR 1960 Mad 510

Hon'ble Judges : Basheer Ahmed Sayeed, J

Bench : Single Bench

Judgement

(1) This civil revision petition arises out of the order of the learned Second Additional Subordinate Judge of Mathurai in an application made by the

plaintiff, under O. 11, Rule 18(2) and S. 151 C.P.C. and also Rules 63 and 64 of the Civil Rules of Practice.

(2) The petition was filed by the plaintiff for inspection of the documents and accounts filed by the respondent in court before the trial of the suit

began. The suit in respect of which this application by the plaintiff was made was one for setting aside the order of the Deputy Commissioner of the

Hindu Religious and Charitable Endowments Board, and to declare that the plaintiff temple was a public temple. The suit was opposed by the fourth

defendant, among others, on the ground that the temple in question was a private temple. After the written statement was filed by the defendants,

including the 4th defendant, who is the petitioner in this revision, a reply statement was also filed by the plaintiff.

In the written statement of the 4th defendant, the petitioner, it was pleaded inter alia that the plaintiff was not a worshipper of the suit temple, that he

was not connected in any manner with its affairs and had no right of worship in the temple and, therefore, was not entitled to maintain the suit, or to claim any relief. It was also contended that the plaintiff was a resident of another village 9 miles away from the village, where the suit temple was situated, and that the suit itself had been filed out of spite and malice due to bitter enmity between the plaintiff and the fourth defendant. It was further pleaded by the fourth defendant, that the suit was barred by S. 103 of Madras Act XIX of 1951, and was not maintainable in view of the prior decisions of the Hindu Religious and Charitable Endowments Board in O. S. No. 432 of 1950, declaring that the suit temple was a private temple.

The fourth defendant also contended that the temple was never dedicated to the public, and that the public did not worship there, and that it was intended for the members of the defendant's family purely as a private temple. A further plea was that the temple had been built as a private temple, and mentioned in the deed of partition in the family, dated 7th July 1902, that the public did not contribute anything either in the shape of money or labour for the construction of the temple, and that on the other hand it was constructed with the funds of the family. It is not necessary to go into all the very elaborate allegations and the pleas set up in the written statement of the 4th defendant, which runs upto 15 paragraphs covering about 11 typed foolscap pages.

(3) After the reply statement was filed by the plaintiff, issues were settled on 29th November 1954. Two weeks time was given for filing of documents, and 12th January 1955 was appointed for the trial of the suit.

(4) In the meanwhile the fourth defendant filed a petition supported by an affidavit on 13th December 1954, in which it was prayed that the court may be pleased to pass an order directing that the document filed by the defendants in court with a list may be kept in a box sealed with the seal of the court in the interests of justice. The affidavits in support of the said petition stated that the defendants were producing their documents in the court that day, and among those documents Nos. 14 to 19 were account books maintained in respect of the receipts and expenses relating to the suit temple, maintained by the previous trustees, and those maintained by the kariasthan of the fourth defendant during the period of his trusteeship

of the suit temple.

It further stated that the account books were very material documents, in support of the defendant's case, and if per chance those are damaged

and missed, the defendants will be greatly prejudiced in their defence. The affidavit went on to say further, that the books were few in number, and

in the interests of justice, necessary safeguards have to be made to preserve them, and this could be done by having them sealed with the seal of

the court and kept in a box. This petition was accordingly ordered. Nearly a year after, that is, on 17th November 1955, the plaintiff filed an

application, out of which this revision has arisen, under Order 11 Rule 18(2) and S. 151 C.P.C. and Rules 63 and 64 of the Civil Rules of Practice

for permission to inspect the documents produced by the 4th defendant into court.

(5) The affidavit in support of this application filed by the plaintiff inter alia stated that the fourth defendant has filed a list of documents, among

which they had produced some account books, that is, documents Nos. 14, 15, 17 and 18 which must have been in their possession and power;

that they had filed the account books relating to the suit temple on which they intended to rely, but that the plaintiff understood that they had been

put in a sealed box and prayed that he must be given permission to inspect the accounts produced in court "for purposes of cross-examination and

to understand the genuineness and purport of the same.

It further stated that to have an inspection, no reasonable objection could be raised by the respondents, and that the plaintiff had a right to have an

inspection of the documents shown in the list produced by the respondents. The deponent further stated in the affidavit, that he had no knowledge

till then, that the documents had been kept in a sealed box, and that he came to know only on 16th November 1955, the suit itself was posted to

the 25th instant and therefore, desired that the inspection should be given of all the documents filed by the respondents, inclusive of the accounts

books referred to above, before the Sarishtadar or such other officer as the court may deem fit to order.

(6) This petition was opposed by the 4th defendant, and his kariasthan filed a counter affidavit contending inter alia that the application was

unsustainable in law, and also on merits, that the mere production of the

documents by one party did not entitle the other, as a matter of right, to have an inspection of the same, that unless such a right was established, the other party could not inspect the documents; that the question whether the defendants had to rely on the documents produced, will certainly depend upon the evidence adduced by the plaintiff, and the proper time for inspection, if such can be had, would be at the time when the trial commenced and evidence was recorded, that the plaintiff before establishing his case that the suit temple was a public temple, the onus of which lay heavily upon the plaintiff, cannot be allowed before leading evidence to have a roving inspection of the documents filed by the defendants, and that the application was mala fide and premature.

(7) The learned second Additional Subordinate Judge of Mathurai, who heard the petition, accepted the claim of the plaintiff, and directed him to have an inspection of the documents mentioned in this petition, before the chief ministerial officer of the court in the presence of the respondent advocate, if the latter chose to be present. Aggrieved by this order, the defendants have preferred this revision petition.

(8) It is not in controversy that the first and the foremost issue to be decided in the suit is whether the suit temple is a public one. It is the claim of the plaintiff that it is a public temple, while the previous order of the Religious Endowments Board has held it to be a private temple. It is beyond question, therefore, that the onus to prove this issue was heavily upon the plaintiff. It is the contention of the learned counsel, Mr. Venkatadri, appearing on behalf of the petitioners, that the plaintiff will not be entitled to have an inspection of the documents produced by the defendants until and unless the plaintiff adduced evidence to prove his claim, that the suit temple was a public one, and until the point was determined by the court.

No doubt the application for inspection has been taken out under O. 11 Rule 18(2), but the real rule, it is urged by the learned counsel for the petitioners, that governs the case is Rule 20, and not Rule 18(2), Rule 20 is to the following effect:

Where the party from whom discovery of any thing or inspection is sought objects to the same or any part thereof, the court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other

reason it is desirable, that any issue or question in dispute in this suit should be determined before deciding upon the right to the discovery or

inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection.

It is urged by the learned counsel for the petitioners, that the fourth defendant having objected to the discovery or inspection of the documents filed

by him in court, the court ought to have held that the discovery or inspection depended on the determination of the issue, namely, whether the suit

temple was a public one or a private one, and should have directed that that issue should be determined before any right to discovery or inspection

could be ordered. The question of discovery or inspection should have been reserved until such time as the question in dispute was determined by

the court. I am of the opinion, that there is force in the contention of the learned counsel for the petitioner and in my view, the mere fact that the

documents had been produced and filed in court will not entitle the plaintiff as a matter of routine to obtain discovery or inspection of the same,

when once objection had been taken by the petitioners.

The learned Judge has observed that the fact that the defendants had produced the documents in support of their case and the affidavit filed in

support of the petition, make him think that the documents are relevant for the purpose of the suit. In my opinion, this cannot be a sufficient ground

for ordering inspection. That the documents are relevant for the purpose of the suit, cannot by itself, be a sufficient reason to order a premature

inspection or discovery before the suit is actually taken up for trial.

(9) The learned Subordinate Judge has further proceeded to observe in his order, that if the inspection is not allowed before the trial, it would

certainly put the plaintiff at some disadvantage and would perhaps protract the course of the trial. Therefore, in such circumstances, he thought that

it was a fit case, where an inspection of the respondent's documents should be allowed, as it would enable the petitioner to conduct the trial

speedily and avoid unnecessary delay in the course of the trial. It is difficult to agree with the reasoning of the learned Subordinate Judge. The

learned Subordinate Judge has not considered the real objections taken by the fourth defendant-petitioner to the claim of the plaintiff respondent,

for inspection of the documents.

Nor has the Subordinate Judge taken into account the allegations contained in the affidavit filed by the plaintiff, in support of his claim for inspection

of the documents in question. Except the allegation that the account books relate to the suit temple, and that the defendants seek to rely upon the

same, there is no allegation in the affidavit of the plaintiff, in support of his petition for inspection that they are even relevant for the purpose of the

suit. The plaintiff merely states that he understands that the documents have been put in a sealed box, and that he must be given permission to

inspect the accounts produced in court, not because those documents would support his contention that the temple is a public one.

On the other hand the express object in claiming inspection has been stated to be for ""the purpose of cross examination and to understand the

genuineness and purport of the same"" and that the plaintiff has a right of inspection, because the documents have been filed and shown in the list

filed by the respondent. Such an allegation could hardly be considered to be a fit or proper ground for claiming inspection of the documents filed

by the petitioner, much less for ordering an inspection of the same in compliance with the demand of the plaintiff. The Subordinate Judge has

completely ignored the allegations referred to above in the affidavit filed in support of the petition by the plaintiff.

He has simply been carried away by the general impression that simply because the documents have come into court, from the custody of the

defendants, the plaintiff will be entitled to a premature discovery or inspection, respective of the fact, whether the documents are material to the

case of the plaintiff, or that the plaintiff was relying upon them, in support of this case, or that an inspection was necessary as the point that was to

be proved by the plaintiff depended upon the documents produced by the defendants. It appears to me to be an unheard of ground to claim

inspection when the plaintiff states that they are required for cross-examination and to understand the genuineness and purport of the same.

No defendant can be compelled to produce any documents or to give inspection of the same for the purpose of facilitating cross-examination, or

for enabling the plaintiff to understand the genuineness o purport of the documents relied upon by the defendants for proving his case. It will lead to

strange results if such grounds are to be accepted by courts in ordering discovery or inspection, especially when these grounds are not the ones

contemplated under the rules, which enable courts to direct discovery or inspection of documents.

(10) The learned counsel for the respondent has, however, contended that no privilege has been claimed by the petitioner in his counter affidavit in

order to deny inspection being given to the plaintiff of the defendants' documents. Though in terms a privilege has not been claimed still the general

tenor and purpose of the affidavit filed at the time when the documents were produced in court and also the one filed objecting the inspection being

ordered is to the effect that the documents are relevant to the case of the defendants, that he seeks to rely upon them, and that inspection could not

be given before the plaintiff is called upon to establish his case, which is comprised in the first issue in the suit, namely, that the temple is a public

temple.

(11) Wallace J. in K.V. Ramachari Vs. K.V. Krishnamachari and Another, has discussed the principles governing the premature discovery or

inspection by plaintiff of documents filed by the defendant in a suit. In the course of the discussion the learned Judge has observed as follows:

I cannot assent to the proposition that when a party has produced in court under Or. 11, Rule 14, documents in his possession but has urged that

inspection should not be allowed before hearing his objection the court has a right to ignore that protest and the other party has a legal right to

inspect all documents relating to all issues and to all stages of the trial of the suit. i. e, that the mere production by one party gives an immediate and

indefeasible right of inspection in the other. I do not read Or. 11, R. 14, as justifying any such conclusion. As the court was proceeding according

to the usual practice in the mofussil, to allow inspection in court under Or. 11 Rule 14 and not under rule 15, I hold it was bound to consider first

defendant's objection to inspection and especially bound to consider whether plaintiff was entitled to inspect all those documents at that stage of

the case, viz. before trial had begun. As pointed out above, the first point to be decided in the case is whether plaintiff is or was a partner in first

defendant's trade. Until that is decided in plaintiff's favour, obviously plaintiff has no right whatever to be allowed to inspect the trade accounts,

apart from those which bear on the question of partnership. The court has no right to assume that plaintiff is a partner, and, if it must hold that he is

not unless and until he proves that he is clearly, it s unjustified in law in allowing a stranger, merely on the allegation that he is a partner, permission

to inspect all the trade accounts of the first defendant. The conduct of the business would be impossible under such conditions and the court has

clearly lent itself to a course which is wholly opposed to public policy and it is therefore necessary for this court to interfere.

This authority has been referred to and relied upon by the learned counsel on both sides before me, and it has also been considered by the learned

Subordinate Judge, before whom the petitioner, the 4th defendant, cited the decision in support of his contention. In my view, the learned

Subordinate Judge does not appear to have understood the real scope of the decision of Wallace J. cited before him. Though this decision arose

under Or. 11 Rule 14, the principles discussed in that decision would seem to apply with greater force to an application that is made under Or. 11

Rule 18, or under rule 20 thereof. This decision does not lend any support to the contention of the learned counsel for the respondent that simply

because the documents have been filed and are relevant to the defendants" case, inspection of the same should be given to the plaintiff as a matter of routine.

The learned Judge, while, considering the scope of the said decision, has observed that he considered the scope and merit of the suit and was of

the opinion that an inspection of the documents produced by the petitioner would be very helpful and necessary for the better and speedy conduct

of the trial. But in this observation, he has not appreciated the position that the plaintiff was asking for a discovery before the actual trial had begun.

It is one thing to say that the inspection of the documents may be helpful and necessary for the fair and speedy conduct of the trial by the court, and

it is quite another thing to say that the petitioner should be given premature inspection of the documents, in respect of which he does not make any

allegation that they are relevant for this case, or that he depends upon them for proving the point which he seeks to establish in the first instance.

(12) The learned Subordinate Judge has also referred to a decision in Pashpati Vizia Nand Bahadur Vs. Hargovind Rai and Another, . This

decision does not in my view apply to the facts that arise for determination in the present case. In Gobardhan Das Vs. Mt. Jai Devi the question of

the necessity for an affidavit by the applicant to satisfy the Court that the document was relevant to the case was discussed, and it was held that

where the Court was satisfied as to the relevancy of the document it was not necessary that there should be an affidavit, and that the want of an

affidavit could not invalidate the order for production for inspection under O. 11 R. 18 C.P.C.

The point, however, remains in the present case, that there is no affidavit filed by the plaintiff that the documents in question which were not filed

along with the written statement had any relevancy to the case. It further held that in case of a document mentioned in the plaint or written

statement or affidavit of discovery, the relevancy is admitted while in the other case the relevancy has to be proved. In this decision no question as

to any objection by the party which produced the document arose for decision by the Court, before an order for inspection.

(13) In *British India Steam Navigation Co. v. Secy. of State* ILR 38 Cal. 230, a Bench of the Calcutta High Court has held that there was no

substance in the contention of the claimants that an order for discovery could not be made in a case under the Land Acquisition Act.

Section 53 makes the provisions of the Civil Procedure Code, save in so far as they may be inconsistent with anything contained in the Act,

applicable to all proceedings before the Court of the Land Acquisition Judge.

The Bench further observed:

It is well settled that in cases where the right to discovery in any form depends upon the determination of any issue or question in dispute in the

cause or matter, or it is desirable that some issue or question of law or fact or mixed question of law and fact in dispute should be determined first,

the question of discovery may be reserved till after the issue or question has been determined.

This case has been relied upon by the learned counsel for the petitioner and reference has been made to the illustrations given by the learned

Judges in the said decision in applying the principle enunciated by them. I think the principles laid down in this case apply to the facts of the present

case.

(14) In *Majeti Ramachandrayya Vs. Mamidi Buchayya*, , Venkatasubba Rao J. has reviewed the English decisions, which govern the claim for

premature discovery, and has observed as follows:

If two conditions are satisfied, discovery may precede particulars first where the information required is necessarily within the opponent's

knowledge: secondly the Court is satisfied that no unfair attempt to fish out a case is being made. When these conditions are satisfied, discovery

may proceed particulars even where the object of the action is to reopen settled accounts.

In the case before me it cannot be said that these two conditions have been satisfied. On the other hand, the request of the plaintiff for inspection in

the light of the allegation in the affidavit filed in support of the petition appears to be only an unfair attempt to fish out a case by means of asking for

inspection of the documents filed by the defendants. The learned counsel for the petitioners has invited my attention also to *Great Western Colliery*

Co. v. Tucker (1874) 9 Ch A 376, *Bewicke v. Graham* (1881) 7 Q. B. D. 400, and *Attorney General v. North Metropolitan Tramways Co.*,

(1892) 3 Ch 70, and also to passages occurring in *Seatons's Judgments and Orders* and *Halsbury's Laws of England*.

It is unnecessary for me to deal with these citations at any length for the simple reason that most of these authorities have already been dealt with in

the cases already relied upon by the learned counsel for the petitioner. Learned counsel for the petitioner has also invited my attention to a decision

in *N.C. Ramanatha Iyer, President, Nurani Grama Jana Sabha Nurani Village Vs. Board of Commrs. for Hindu Religious Endowments, Madras* ,

to which I myself was a party in support of his contention that it is not necessary that there should be a discovery of documents in order to establish

that a temple is a public temple.

(15) On behalf of the respondent, the learned counsel has referred to at great length to *Daniel's Chancery Practice*, Vol. 1, 1934 Edn. and

particularly to those passages that occur at pages 568, 605, 613, 615, 629 and 630. I do not think that any of these passages help the respondent

in his present contention. They lay down the general proposition that production of documents could be ordered, if the documents are relied upon

by the party asking for inspection that they prove his case, and not that inspection could be ordered when actually an issue or point in dispute has

to be first established by the party asking for such inspection. I do not think that

in the view I have taken of the case, I need burden this judgment

with any elaborate reference to the several passages mentioned above. Suffice it for me to refer only to see passage occurring at page 630 to the

following effect:

The result of the cases on this subject has been thus stated: If it be, with distinctness and positiveness, stated in an answer that a document forms a

supports the defendant's title, and is intended to be, or may be used by him in evidence accordingly, and does not contain anything impeaching his

defence, or forming or supporting the plaintiff's title, or the plaintiff's case, that document is, I conceive, protected from production, unless the

Court sees, upon the answer itself, that the defendant erroneously represents or misconceives its nature.

But where it is consistent with the answer that the document may form the plaintiff's title or part of it may contain matter supporting the plaintiff's

title or the plaintiff's case, or may contain matter impeaching the defence, then, I apprehend the document is not protected nor, I apprehend, is it

protected if the character ascribed to it by the defendant is not averred by him with a reasonable and sufficient degree of positiveness and

distinctness. It would seem, however, that under the present practice the circumstances that the document may contain matter impeaching the

defence is not regarded as material, at least in an ejectment action.

(16) A further passage occurring at page 631 may also be usefully referred to:

Under the practice of the Court of Chancery a mere statement in the answer, of a document which the party was not bound to produce, or a mere

reference to a document relating exclusively to the defendant's title did not entitle the applicant to its production.

In this case there is also no allegation in the affidavit that the documents produced by the defendants relate to the common case of both the parties.

On the other hand, the claim of the defendant, as I understand, is that they relate exclusively to his case, and not that they relate to the case of both

the parties. Cases no doubt have held that if documents produced by one party relate to the case of both the parties then the party producing them

cannot claim exemption from inspection

Respondent's counsel has also invited my attention to passages in Halsbury's Laws of England Vol. X paras 454, 460, 461, 406 and 429 in

support of his contention, that he was entitled to inspection of documents on the principles enunciated in the said paragraphs. I do not think that I

can agree with him. In my view the general propositions laid down in those paragraphs are unexceptionable and the conditions which have to be

satisfied, while applying the principles enunciated therein, do not obtain in the present case.

(17) Learned counsel has also relied upon *Ahmedbhoy Hubibhoy v. Vulleebhoy Cassumbhoy* ILR 6 Bom 572 and referred to me the passage

occurring at page 577 in the said judgment. I do not think that that passage is of any assistance to the learned counsel. On the other hand it seems

to help the case of the petitioner.

(18) *Parker v. Wells* (1881) 18 Ch D. 477 also relied upon by the learned counsel for the respondent does not apply to the facts of the present

case, and is not for any assistance to the respondent. The facts in *Leitch v. Abbott* (1886) 31 Ch D. 374 are not ad idem to the facts in the present

revision before me. If anything the observations contained in that case help the point urged on behalf of the petitioners.

(19) Learned counsel for the respondent has invited my attention to *Whyte v. Ahrens* (1884) 54 LJ Ch 145, and *Benno Jaffe and Darmstaedter*

Lanolin Fabrick v. Richardson and Co. (1893) 62 LJ Ch 710, and *Harisingh v. Ramchand* 12 Ind Cas 605 (Lah), in further support of his

contention. I do not think that these authorities advance the case of the respondent any further. They deal only with propositions of a general

character, which do not directly arise in the present case.

(20) Therefore, on a consideration of the facts and circumstances that arise in this case, I am of the opinion that the order of the learned

Subordinate Judge is one that is not sustainable, and it is accordingly set aside, and the revision petition is allowed with costs.

(21) Revision allowed.