

(2016) 10 AHC CK 0104
In the Allahabad High Court
Case No : Civil Revision No. 666 of 2012.

**Chandra Prakash Mishra And Another - Revisionists @HASH State of U.P.
And Others - Opposite Parties**

Date of Decision : 17-10-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 6, Order 11 Rule 7, Section 115

Citation : (2016) 10 ADJ 575 : (2017) 2 AILLJ 386 : (2016) 6 AllWC 6456 :
(2017) 1 ARC 93 : (2017) 1 ICC 614

Hon'ble Judges : Pankaj Mithal, J.

Bench : Single Bench

Advocate : Nripendra Mishra, Advocate, for the Revisionist; Q.H. Siddiqui, A.K. Gupta, Ajay Kumar Singh, Ashish Kumar Singh and Jaya Tiwari, Advocates, for the Opposite Parties

Final Decision : Dismissed

Judgement

Pankaj Mithal, J. - I have heard Sri M.D.Singh Shekhar, Senior Counsel assisted by Sri Nirpendra Mishra appearing for plaintiff-revisionists and Sri Ashish Kumar Singh, learned counsel for the main contesting parties respondents No.9, 10 and 11.

2. Respondent No.1, 2 and 3 are represented by Standing Counsel whereas respondents No.4 and 5 by Sri Q.H. Siddiqui. Respondent No.6 to 8 are only formal parties as they have transferred their interest in the property in favour of respondents No.9, 10 and 11.

3. The plaintiff-revisionists have preferred this revision under Section 115 of the Code of Civil Procedure against the order dated 29.10.2012 passed by the court of first instance in Original Suit No.1032 of 2006 Chandra Prakash Mishra and another v. State of U.P. And others.

4. The plaintiff-revisionists instituted the above suit for declaring them to be entitled to get the balance area of about 2664.73 Sq. Meter of land of site No.W, Civil Station, Allahabad, said to be in their possession, converted into freehold on payment of necessary charges and for a decree of mandatory injunction directing

the defendants to execute free hold deed in respect of balance area of 2664.73 Sq. Meter in their favour with a further prayer for declaring the free hold deed dated 29.3.2006 executed in favour of respondent No.6, Smt. Manju Agrawal; sale deed dated 31.5.2006 executed by the aforesaid Smt. Manju Agrawal in favour of Smt. Rajya Shree Shukla, respondent No.7; free hold deed dated 30.3.2004 executed in favour of Smt. Shail Kumari Agrawal and Shadab Agarwal jointly, respondent No.10 and 11; free hold deed dated 12.3.2004 executed in favour of Pramod Nagar, respondent No.8; agreement dated 21.6.2004 executed in favour of Pratap Singh, respondent No.9 and the sale deed dated 31.7.2006 executed in favour of aforesaid Pratap Singh as null and void.

5. In the aforesaid suit plaintiff-revisionists served ten interrogatories upon respondents No.10 and 11 under Order 11, Rule 1 of the Code of Civil Procedure. The said interrogatories are as under:

(i) When did you contact Sri Shyam Das Agrawal first in respect of suit property for free hold?

(ii) What is the amount of money paid by you to Shri Shyam Das Agrawal for the suit property?

(iii) Had you seen/examine the lease deed dated 20.10.1994 executed in favour of Sri Shyam Das Agrawal on or before 15.4.2004?

(iv) Had it been known to you the lease deed dated 20.10.94 executed in favour of Sri Shyam Das Agarwal was only for the period 03.02.1959 to 02.02.1989?

(v) Had you seen/examined G.O. dated 03.10.1994 mentioned in your hold dated 20.10.2003?

(vi) What was the basis on which you got nominated for free hold by late Shyam Das Agrawal and whether late Shyam Das Agrawal signed the nomination paper in your presence?

(vii) Did you ever seen or inquire from Late Shyam Das Agrawal of Sri Lochan Singh Yadav the then A.D.M. (Nazul) the spot position of the Nazul property you got on the basis of nomination by Late Shyam Das Agrawal?

(viii) Was there any order of the State Government for sub division of the nazul property comprised in lease deed dated 20.10.1994?

(ix) Did you go through the all G.Os. Mentioned in the free hold deed dated 15.04.2004 and conditions mentioned therein?

(x) Did you see that lease deed dated 20.10.1994 is a only for the past period which expired on 01.02.1989 itself?"

6. The court of first instance by the impugned order has refused to grant leave to the plaintiff/revisionist to seek the above interrogatories on the ground that they are not relevant and since the statement and the cross-examination of the respondents No.10 and 11 are still to be recorded the plaintiff/revisionist can put

these questions, if necessary, in cross-examination.

7. The aforesaid order has been challenged basically on the ground that the objections to the interrogatories were not filed within time and were not supported by any affidavit as required under Rule 6 Order 11 C.P.C.

8. Under Rule 7 Order 11 C.P.C. the interrogatories can be set aside or struck out if they are unnecessary or scandalous on the application of the party filed within seven days after service of the interrogatories.

9. Notwithstanding the objections of the respondents No.10 and 11 to the aforesaid interrogatories, it is important to mention that every interrogatory served upon the party to the suit is not supposed to be permitted to be replied and answered and in the event they do not relate to any matter in question to the suit shall be deemed to be irrelevant though they might be admissible in cross-examination of the witnesses.

10. A reading of Rules 6 and 7 of Order 11 C.P.C. makes it clear that the court is not to grant leave for serving the interrogatories if they are not relevant and material or are unnecessary. This is irrespective of the objections from the party concerned.

11. It is settled law that though the object and purpose of serving interrogatories is to seek information from the opponent so as to shorten the trial proceedings and save time of the court by avoiding summoning of witnesses but nonetheless this power has to be exercised with great care and caution. A court of law is not supposed to allow a party to indulge in fishing expedition or to embark upon a roving enquiry under garb of serving an interrogatory. Thus, the interrogatories which neither have any relevance nor any connection with the matter in suit are not permissible in law.

12. The respondents No.10 and 11 are claiming right in the property on the basis of free hold deed dated 30.3.2004 executed in their favour on the basis of nomination made by late Shyam Das Agrawal.

13. None of the aforesaid interrogatories ex-facie relate to free hold deed dated 30.3.2004 on the basis of which the respondent No.10 and 11 are claiming rights in the property. They are more or less in respect of transactions earlier to the execution of the aforesaid free hold deed which may not be very relevant and if at all considered to be relevant are matters which can put to the respondents No.10 and 11 during the cross examination as their statements are yet to be recorded and they are to be cross-examined.

14. The order refusing to grant leave to serve the interrogatories does not decide any substantive right of the parties to make it a case decided within the meaning of Section 115 of the Code of Civil Procedure. In *Y. Venkateswara Rao v. K. Nagamma*, AIR 1972 Mysore 254, it has been held that an order refusing to deliver interrogatories is not an adjudication of any right and is not open to revision.

15. His Lordship the then Chief Justice of the Allahabad High Court in *Maheshwari Oil Mill v. Girjanath Durga Saran*, AIR 1980 All 265 held that an order refusing to grant leave to deliver interrogatories is not an adjudication of any right or obligation of the parties and does not amount to a case decided. It is purely an interlocutory order which is not revisable under Section 115 C.P.C.

16. In view of the aforesaid facts and circumstances, neither the revision against the impugned order is maintainable under Section 115 C.P.C. nor the order otherwise suffers from any jurisdictional error to warrant exercise of supervisory jurisdiction.

17. The revision is accordingly dismissed with the direction to the court below to proceed with the suit on merit in accordance with law most expeditiously.