

(2022) 06 CHH CK 0012
In the Chhattisgarh High Court
Case No : Writ Petition (227) No. 523 Of 2021

Chunni Lal (Dead) Through Lrs

APPELLANT

Vs

President, Anjuman Islamiya

RESPONDENT

Date of Decision : 16-06-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 8 Rule 1(3), Order 7 Rule 14, Order 7 Rule 14(3), Order 6 Rule 17, Order 41 Rule 27
Waqf Act, 1955 — Section 83

Citation : (2022) 06 CHH CK 0012

Hon'ble Judges : Parth Prateem Sahu, J

Bench : Single Bench

Advocate : H.B. Agrawal, Swati Agrawal, Manoj Pranjpe, Saket Pandey, Shakti Singh Thakur

Final Decision : Allowed

Judgement

1. Challenge in this writ petition is to the order dated 13.08.2021 passed by Presiding Ofcers of Chhattisgarh Rajya Waqfs Tribunal, Raipur (hereinafter referred to as "Waqf Tribunal"), whereby the Waqf Tribunal allowed the application fled under Order 8 Rule 1(3) read with Section 151 of CPC fled by defendant No. 2 and dismissed two applications fled by petitioner/ plaintiff under Order 7 Rule 14 of CPC dated 05.09.2019 and 03.03.2020.

2. Mr. H.B. Agrawal, learned Senior counsel for petitioners would submit that petitioner is in possession of the land bearing khasra No. 209, plot No. 6/1 measuring 11000 sqft. situated at tahsil and district Dhamtari by raising building construction since year 1972. The said land was recorded as Government land in revenue records. Respondent No. 1 was not having the patta of the aforementioned land issued by the State Government but even then Collector, Dhamtari vide its order dated 05.09.2009 has renewed the patta/ lease in its favour. The order of Collector was put to challenge in an appeal before the Additional Commissioner, Raipur, division Raipur and after considering the entire

facts and circumstances, grounds in appeal the order of Collector of renewal of patta over the land khasra No. 209 was set aside observing that renewal of patta/ lease is not in accordance with the law. The land in the revenue records is recorded as grass-land. Respondent No. 1 initially fled a civil suit for injunction before the Civil Judge, Class-I, Dhamtari. After issuance of notice, petitioner submitted a written statement as well as counter claim but subsequently the Civil Suit was withdrawn vide order dated 23.09.2013. The order of withdrawal of entire suit was challenged by petitioner before the appellate court. Petitioner received the notice by which he came to know that Respondent No. 1 has initiated proceeding before Respondent No. 2 for possession which was allowed in favour of Respondent No. 1 directing for hand over the possession of property in dispute and further calculated the rent from 01.04.1972 to 31.03.2013. The order was put to challenge before the Waqf Tribunal under Section 83 of the Waqf Act, 1955 on the grounds mentioned therein. In the proceedings before the Waqf Tribunal, Respondent No. 2 submitted its reply denying the facts pleaded. During the pendency of proceedings before the Waqf Tribunal, petitioner submitted an application under Order 7 Rule 14 of CPC on 05.09.2019 for taking additional document on record which is the copy of plaint filed by Respondent No. 1 against the officials of State Government as also the written statement. Another application under Order 7 Rule 14 CPC was also filed on 03.03.2020 for taking additional document on record which is judgment dated 26.03.2016 passed by Waqf Tribunal. He contended that in the first application copy of plaint would show that petitioner was not a party to suit, hence, he was not aware about the proceedings. When he came to know about the proceedings filed by Respondent No. 1 in the year 2019, obtained certified copy and fled an application immediately. Pleadings in the plaint filed by Respondent No. 1 mention that the land in question bearing plot No. 6/1 to 6/8 is a disputed land. In revenue records it is shown as the Government land. In the plaint, there is specific mention of 11000 sqft of land, hence, the document is very much relevant and important for just decision of proceedings pending before the Waqf Tribunal. The second application was fled for taking additional document/ evidence on record of the judgment passed by Waqf Tribunal on 26.03.2016 in the petition fled by Respondent No. 1 against M/s Muzafar Hussain, wherein the Waqf Tribunal has also formulated the question with regard to land on plot No. 6/3 of khasra No. 209 whether to be Waqf property or not. Petitioner's documents are necessary for just decision of the case but the Waqf Tribunal only considering that the evidence of petitioner has already been closed and further erroneously recorded finding that the documents are not so important, illegally rejected the application.

3. Mr. Manoj Pranjpe, learned counsel for Respondent No. 1 opposing the submissions of learned counsel for petitioner would submit that it is for the petitioner/ plaintiff to fle all the relevant documents which are to be relied by him along with the plaint itself showing them in the list of documents. Petitioner's evidence was closed and application submitted by petitioner was at highly belated stage. The Waqf Tribunal had rightly rejected the application even

evaluated the importance of documents for the purpose of disposing of appeal pending before it. There is no illegality in the order passed by Waqf Tribunal, thus, writ petition is devoid of any substance which deserves to be dismissed. He placed his reliance upon the judgment between Shantilal vs. Battulal in W.P. No. 4085/2017 decided on 18.07.2017 by High Court of Madhya Pradesh, in support of his contention.

4. Mr. Saket Pandey, learned counsel for Respondent No. 2, adopts the submissions of counsel for Respondent No. 1 and would submit that impugned order passed by the Waqf Tribunal is strictly in accordance with law which does not call for any interference.

5. Learned Panel Lawyer representing the State would submit that so far as it relates to proceedings in this petition, it is Respondents No. 1 and 2 who are the contesting parties.

6. I have heard learned counsel for the parties and also perused the record of writ petition.

7. Perusal of impugned order would show that in the same order Waqf Tribunal allowed the application under Order 8 Rule 1 (3) CPC by Respondent 1 and has rejected two applications filed under Order 7 Rule 14 CPC of petitioner on two grounds that application is filed at belated stage and also that the documents are not so important for disposal of proceedings.

8. To appreciate the rival submissions of learned counsel for petitioner as well as Respondents, I find it appropriate to extract relevant portion of provision under Order 7 Rule 14 of CPC which reads as under:

“Order VII –Plaint:

14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

[(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.]

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.”

9. From bare perusal of the aforementioned provision, it is amply clear that

pleading requires filing of the documents relied upon by him along with plaint under Order 7 Rule 14(3). If for any reason plaintiff failed to produce the documents in support of plaint shall not be permitted to file without the leave of the Court. The provision does not specifically bar on production of document at later stage but provides that it can be filed with the leave of the Court. The lawmakers were conscious of the fact that there may be chances of receiving important documents at the later stage of proceedings, hence, it was left open for the purpose of providing them an opportunity to place on record the important documents if any could not be filed along with plaint to submit with permission of Court. It is for the Court to apply its mind evaluating the importance and necessity of the documents/ relevancy of documents in disposal of the proceedings pending before it. The discretion is to be applied judicially taking note of the fact that production of documents at belated stage is a bona fide or mala fide. The document placed on record along with application under Order 7 Rule 14 CPC is imperative for proper and effective adjudication of the case and whether refusal of document would lead to injustice or multiple litigation. Provision under Order 7 Rule 14 CPC, is only the procedure. Procedural law is subservient to and is in aid of justice.

10. Hon'ble Supreme Court in the case of Chakreshwari Construction Pvt. Ltd. vs. Manohar Lal reported in (2017) 5 SCC 212 while considering the issue of filing application under Order 6 Rule 17 and Order 7 Rule 14(3) CPC, held thus:

"13 . The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In the case of Revajetu Builders and Developers v. Narayanaswamy & Sons, (2009) 10 SCC 84, this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under: (SCC p. 102)

"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the court should decline amendments if a fresh suit on the

amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

14. x x x x x

15. x x x x x

16. It is true that there was some delay on the part of the appellant in filing the applications but, in our opinion, the appellant had explained the delay. One cannot dispute that in appropriate cases, the parties are permitted to amend their pleadings at any stage not only during the pendency of the trial but also at the first and second appellate stage with the leave of the Court provided the amendment proposed is bona fide, relevant and necessary for deciding the rights of the parties involved in the lis.

17. Similarly, the law also permits the parties to file additional evidence at any stage of the trial [Order 7 Rule 14 (3)] including at the first or/and second appellate Stage (Order 41 Rule 27) with the leave of the Court provided a case is made out to seek such indulgence."

11. Hon'ble Supreme Court in the case of R.N. Jai & Brothers and others vs. Subhashchandra reported in (2007) 6 SCC 420, by majority view taken by Hon'ble Justice Dr. Arijit Pasayat and D.K. Jain, JJ, observed that- "A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

12. Hon'ble Supreme Court in the case of State of Assam vs. Union of India and others reported in AIR 2018 SC 3446 considering the provisions under Order 7 Rule 14 CPC and production of documents which are not in possession of applicant, held thus:

"3. Having heard learned counsel and upon evaluating the objection of the State of Nagaland, we see no reason to disallow the production of the maps. The evidence of PW 9 is being recorded. Production of the above documents by the witness for the Survey of India should, in our view, be allowed in the interest of justice. The documents were not in the possession of the applicant and the earlier order of this Court will not preclude the State of Assam from seeking production at this stage. We, however, clarify that we have not dealt with the relevance or admissibility of the documents. It would be open to the State of Nagaland to raise such objections as it is advised to raise and all appropriate defences."

13. Facts of the case at hand are that petitioner was not party to the

proceedings, the documents which he wanted to produce vide application dated 05.09.2019 is a copy of Civil Suit filed by Respondent No. 1 against the State Government and the other departments of the State Government. In the body of plaint, there is mention of plot No. 6/1, khasra No. 209 which is also a disputed khasra and plot number of the present proceedings. Copy of plaint would show that Respondent No.1 sought declaration of the said plot and area of the land i.e., 11000 sqft. to be their ownership land as the pleadings made by petitioner is that the land possessed by him bearing khasra No. 209, plot No. 6/1 measuring 11000 sq. ft. is a Government land and therefore the documents, in the opinion of this court, are important documents for just decision of the proceedings. In application dated 03.03.2020, petitioner sought to produce judgment of the Waqf Tribunal passed in Misc.Civil Suit No. 21-A/2011, wherein the Issue No. 1 framed is with regard to khasra No. 209 plot No. 6/3 whether to be waqf property and has been decided in negative.

14. Taking into consideration the nature of dispute, pleadings made by petitioner in the proceedings under Section 83 of the Waqf Act, 1955 before the Waqf Tribunal, the document sought to be produced along with applications under Order 7 Rule 14 of CPC are important.

15. Undisputedly, petitioner has not placed on record the documents sought to be produced along with an application under Order 7 Rule 14 CPC with plaint, but from perusal of the contents of documents it is apparent that the petitioner is not party to those proceedings. He pleaded that he came to know about it later and thereafter application was fled. In aforementioned facts of the case, I am of the view that there is no mala fide on the part of petitioner but filing an application under Order 7 Rule 14 CPC at this stage is bona fide and if the applications are not allowed it may lead to injustice to petitioner.

16. For the foregoing reasons, in the interest of justice, the impugned order, so far as it relates to rejection of applications by petitioner fled under Order 7 Rule 14 CPC dated 05.09.2019 and 03.03.2020, is set aside and the said applications i.e. dated 05.09.2019 and 03.03.2020 fled by petitioner are allowed. It is directed that the documents fled along with those applications shall be taken on record.

17. With the aforesaid observation and discussion, writ petition stands allowed.