
(1998) 11 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Revision Petition No. 793/98

Jagdeo Singh and Others

APPELLANT

Vs

Kumari Disha Banerji and Others

RESPONDENT

Date of Decision : 09-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1(2)

Citation : (1999) 1 CivCC 644 : (1999) 1 RLW 451

Hon'ble Judges : Mohd. Yamin, J

Bench : Single Bench

Advocate : B.L. Maheshwari and Mr. S.N. Pungalia, for the Appellant; R.K. Rathi and Mr. M.C. Bhoot, for the Respondent

Final Decision : Dismissed

Judgement

Mohd. Yamin, J.—A Civil Suit has been filed by Kumari Disha Benerji aged about 6 years through her next friend against the petitioners who are defendants before the trial Court According to the plaint the grand father of Disha had purchased a constructed plot bearing No.484-B on 15.6.45 from its earlier owner Mr.Dccnanath Bhargav for a sum of Rs.30,000/-. The sale deed was executed in favour of Jitendra Nath Banerji and his minor son Achind Dev Banerji. Patta from the Municipal Board was issued in the name of both of them. Later on a piece of Khalsa land measuring 10ft. x 57 ft. was purchased from the Municipal Board.

2. There are allegations that Achind Dev married with Deepali against the will of his father. However, Anindo Dev was born on 5.1.67. It is further, averred that Smt. Deepali had illicit relations with K.K.Rai even before her marriage. She quarreled with her husband Achind Dev and left him in Year 1979 and started living with her parents. After the death of her father she openly used to live as a girl-friend of K.K.Rai. After the death of Achindo Dev she married with K.K.Rai and now she is his wife. Anindo Dev married with Yamini on 22.11.1991 and plaintiff" Disha is the only daughter out of this wed-lock. Anindo Dev was in habit of drinking excessively, and was a habitual gambler. He was at the time of

marriage employed with Toranto Company as a Medical Representative but because of his excessive expenses he used to sell the goods of the company without bringing it to the notice of the Company and compelled his wife Yamini to bring help from her parents. Yamini started a taxi business under the name of "Disha Tours & Travels". The business was started in her name as Anindo Dev was a man of bad character. However, he used to work with Disha Tours & Travels. In the year 1994 he had to leave service of the Company. He used to issue cheques to various parties by forging signatures of Smt Yamini Banerji and also sold the taxies. Dr. Achindo Dev who was the real grand father of the plaintiff was very much perplexed when came to know that his son Anindo Dev had taken loan of lacs of rupees. This amount was about 25 lacs and Anindo Dev wanted help from his father.

3. It is further averred that defendant No. 1 took benefit of this situation and got an agreement executed from Achindo Dev about the sale of the property. This deed also bears signature of Smt.Yamini and is in possession of defendant No. 1. Draft of this agreement was first typed which was corrected by Dr.Achindo Dev. These two documents are in possession of defendant No. 1. This agreement contained certain conditions which are stated in para No.6 of the plaint. Later on the bad relation between Achindo Dev and his son taxed the health of Achindo Dev. Achindo Dev suffered heart-attack and died on 14.2.97. It is further averted that the defendant No. 1,2 & 3 knew his habits of Anindo Dev and they prepared a plan of usurp property. Anindo Dev had by that time developed illicit relations with Miss Hetal Solanki. Defendant No. 1 Jagdev Singh provided a flat to both of them situated at New Campus Road Jodhpur and a car bearing No.RJ-19-C 1421. This Anindo Dev, the father of Disha Banerji performed an Arya Samaj marriage with Miss Hetal Solanki on 20.3.98. It is further averred that in January 1997 different sale deeds were executed which are sham. But the possession of the whole property was handed over to defendant No.1. Even a single pie was not given to anyone of the members of the family of Anindo Dev neither did he bring the money to them. The sale deeds are five in number. A suit for cancellation of these sale deeds has been filed in forma pauperis. It has been further prayed that status quo may be maintained so that the defendants may not raise construction and they may be ordered y permanent injunction that the plaintiff may be allowed to live therein and they may not further transfer the property.

4. An application under Order 39 Rule 1 (2) CPC was also filed in which relief of temporary injunction to maintain status quo has been prayed and it has been further prayed that the defendant may be restrained from digging the foundation for construction of under ground portion. In the proceedings under Order 39 Rule 1 (2) CPC a prayer was made that the defendant may be asked under Order 11 Rule CPC to discover and produce the documents which are two agreements referred to above. The trial Court allowed the application. Hence this revision.

5. Learned counsel for the petitioners first submitted that provisions of Order 11 CPC do not apply to the miscellaneous applications because it relates to trial of

suits and the words used in Order 12 CPC are that any party may without filing any affidavit apply to the court for an order making any other party to any suit to make discovery on oath. Similarly Rule 14 of Order 11 CPC provides that it shall be lawful for the Court at any time during the pendency of the suit to order the production of such documents. So according to him it would not apply to the miscellaneous proceedings.

6. Learned counsel for the respondents has repelled it. He submitted that the application may be regarded as having been filed in the main suit if that the application maybe regarded as having been filed in the main suit if this court holds the view that the provisions do not apply to the miscellaneous proceedings under Order 39 Rule 1 (2) CPC. He has cited a Supreme Court judgment reported in Shri M.L. Sethi Vs. Shri R.P. Kapur, which lays down that provisions of Order 11 Rule 12 CPC for discovery of documents apply to provisions under Order 33 CPC. In this citation it has been observed that even, if England discovery is granted in all but purely criminal proceedings.

7. In view of the this law of the land I am inclined to hold that the order will apply even to proceedings under Order 39 Rule 1(2) CPC. Therefore, the argument of the learned counsel for the petitioners does not hold water.

8. So far as the order on merits is concerned it may be stated that after amendment in Section 115, CPC in the year 1977 the scope of revision has become very limited. The learned trial Court has allowed the application and has asked the petitioners to discover the two documents on oath. They are the two agreements referred to above. I do not find any error of jurisdiction. The documents are very relevant and need to be produced in this case as the sale deeds are challenged being different/contrary to agreements.

9. Consequently, the revisions petition has no force and it is hereby dismissed. No order as to costs.