
(2001) 05 RAJ CK 0095

In the Rajasthan High Court

Case No : Civil Revision Petition No. 576 of 2001

Jai Singh

APPELLANT

Vs

Jagdish and Another

RESPONDENT

Date of Decision : 21-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2001) 4 RLW 648 : (2002) 1 WLN 514

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties. The plaintiff moved an application Under Order 13 Rule 10 CPC and prayed that a partnership deed executed between the defendants dated 28.3.1986 may be summoned from the Income Tax department, upon which the learned trial court allowed the application of the plaintiff-non-petitioner by order dated 30.3.2001 against which the petitioner has moved this revision petition.

2. Learned Counsel for the petitioner submitted that the court has no jurisdiction to summon record of any other department except the court Under Order 13 Rule 10 CPC. According to learned Counsel for the petitioner the relevant provision for summoning of document from any other department except the court is Order 16 Rule 1 and Order 16 Rule 6 CPC, therefore, the impugned order Under Order 13 Rule 10 CPC is absolutely illegal and contrary to law. Learned Counsel for the petitioner further vehemently submitted that even Under Order 13 Rule 10 CPC the mandatory requirement of law is that the party, who is seeking relief for summoning of record or document is required to file duly authenticated copy of the document, which party wants to summon from the court. Therefore, here in this case when the plaintiff failed to place on record the duly authenticated copy of the document in dispute the relief Under Order 13 Rule 10 CPC cannot be granted.

3. Learned Counsel for the petitioner further submitted that the plaintiff-non-petitioner has full opportunity to summon the document by filing list of witnesses Under Order 16 Rule 1 CPC wherein the plaintiff submit a list of witnesses including the person to whom he want to produce with a request to summon the person to produce the document Under Order 16 Rule 1 CPC. Therefore, also the discretion should not have been exercised by the trial court in favour of the non-petitioner Under Order 13 Rule 10 CPC. Learned Counsel for the petitioner vehemently relied upon the judgment of the Division Bench of the Karnataka High Court in the case of Papanna and Others Vs. H. Dodde Gowda and Others, , wherein according to learned Counsel for the petitioner the mandatory requirement of production of certified or authenticated copy of the document sought to be produced has been recognized by the Division Bench of the Karnataka High Court.

4. I perused the application filed by the non-petitioner plaintiff and the photostat copy of the deed shown by the Counsel for the non-petitioner. From a bare perusal of the Order 13 Rule 10 CPC it is clear that Sub-rule (1) of Rule 10 of Order 13 makes a provision for summoning of record from other court and this record can be summoned by the court by its own motion or upon the application of any of the party.

5. Sub-rule (1) of Rule 10 of Order 13 CPC provides for procedures before summoning the record or other documents, which according to the learned Counsel for the petitioner is mandatory and the relief can be granted only if duly authenticated copy of the record is placed on record of the court summoning the record. For this purpose I may quote Sub-rule (2) of Rule 10 of Order 13, which is as under:

Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

6. A bare perusal of Sub-rule (2) of Rule 10 of Order 13 it is clear that word "shall" has been used just before the phrase, which are as under:

shall (unless the Court otherwise directs).

7. This itself is sufficient indication of the fact that the legislature in its wisdom used the word "shall" but reduced its mandatory nature by using the word "unless the Court otherwise directs". This discretion which has been given to the court of law by using the word "unless the Court otherwise directs", can be presumed that the legislature never had an intention to take away any discretionary power of the court of law for the purpose of exercising the power Under Order 13 Rule 10 CPC of Sub-Clause (1) and (2). Otherwise the words used "(unless the court otherwise directs)" will be of no effect" and the

legislature never uses the words which have no value, therefore, I am unable to accept that the word "shall" used in this provision is mandatory.

8. The word "shall" has been used in a manner in Sub-rule (2) of Rule 10 of Order 13, which shows the intention of legislature that for summoning of record of court, an affidavit is required from the party that too "unless the court otherwise directs" to show how the record is material to the suit in which the application is made. Obvious reason is that before summoning of record from a court of law the court must be satisfied that it has material bearing in the suit, which is being tried by the court then and then only the court can summon the record or document from the proceedings of the other court.

9. In addition to above it is provided in Sub-rule (2) of Rule 10 of Order 13 that applicant cannot, without unreasonable delay or expense obtain a duly authenticated copy. This phrase used also indicative of the fact that to avoid unnecessary summoning of document provision has been made and, therefore, it is required that applicant is required to satisfy the court that applicant cannot obtain the duly authenticated copy without unreasonable delay or expense. This can be interpreted in a manner that when court is satisfied that applicant will have to bear expenses and it may cause delay then filing of the duly authenticated copy can be dispensed with. This also suggests that filing of duly authenticated copy is not sine-quo-non for passing of order of summoning of document Under Sub-rule (2) of Rule 10 of Order 13 CPC. When the legislature itself has provided the contingency in which the authenticated copy can be dispensed with before summoning of the document then also it cannot be said that the court has no discretion to order for summoning of the document unless an authenticated or certified copy of the document has been filed in all cases. The court of law is required to apply their judicial mind for exercising jurisdiction for dispensing with the production on certified copy and if there is a unreasonable delay likely to cause by directing to produce certified copy or the party will have to bear the expenses, which in view of the court will not be appropriate and proper then the court can certainly permit the party to seek relief for production of document without filing duly authenticated and certified copy.

10. The last portion of the Sub-rule (2) of Rule 10 of Order 13 CPC further makes a provision, which is as under:

or that the production of the original is necessary for the purposes of justice.

This also shows that the production of the original, if it is necessary then the court may pass the order for summoning the original document.

11. Here in this case learned Counsel for the petitioner submitted before this court that according to them there is no partnership deed in existence as alleged by the plaintiff-non- petitioner. Learned Counsel for the petitioner further submitted that non-petitioner-plaintiff has given the date of partnership as on 1st April, 1985 whereas he is now seeking production of the document dated 28th

March, 1986, therefore, this itself shows that there is no certainty of the document, which is sought to be required to be produced from the department and, therefore, the discretion should not have been exercised in favour of the non-petitioner-plaintiff by the trial court.

12. When the photostat copy of the document is available on record and genuineness of the document is challenged then that fact can be proved only by summoning the original document, therefore, summoning of the document became necessary for the just decision of the suit, as it may have material bearing over the just decision of the suit and this argument supports the summoning of the original documents itself.

13. Learned Counsel for the petitioner further submitted that relevant provision is not Under Order 13 Rule 10 CPC and it should have been summoned by the plaintiff by submitting the list of witnesses Under Order 16 Rule 1 or 6 CPC describing the particulars of the document and the name of the person from whom the document is sought to be summoned or by seeking relief Under Order 16 Rule 6 CPC are only applicable and the learned Counsel for the petitioner submits that even the relief for production of document by moving application Under Order 13 Rule 10 CPC is premature.

14. When there is a clear position of law Under Order 13 Rule 10 CPC, when the document from the court can be summoned procedure has been provided for summoning of the record and documents of the court. When there is a power given to the civil court to summon a witness to produce document Under Order 16 Rule 1 and Order 16 Rule 6 then it is a clear case where the court has jurisdiction to pass order of summoning of document and there is no lack of jurisdiction simply because the order has been passed under different provision of law. What is important is the source of power and not the mentioning of the provision of law. When there is a power vested in the court of law to summon the document in these provisions then here in this case there is no illegality in exercising of jurisdiction by passing the impugned order.

15. Assuming for the sake of argument at the time of filing of the application Under Order 13 Rule 10 CPC by the plaintiff the issues were not framed and the plaintiff has opportunity to file the list of witness Under Order 16 Rule 1 CPC and also has got right to pray before the trial court Under Order 16 Rule 6 CPC to summon a person just to produce the document then also this never shows that the petitioner is going to suffer any irreparable injury or there may be failure of justice. The proceedings of law cannot be permitted to use against the equity and justice therefore also the order under challenge cannot be interfered in this case while exercising the power u/s 115 CPC.

16. Learned Counsel for the petitioner further submitted that by summoning the document at this stage before evidence of the plaintiff the case of the petitioner will be prejudiced. According to the learned Counsel for the petitioner in case the document produced Under Rule 6 of the Order 16 then he shall have right to

cross-examine the person who has been directed to produce the document for which relevant provision of law is as under:

6. Summons to produce document. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

17. The above provision of law makes it very clear that any person can be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same. It is clear that the person who is required to produce document can even send the document without attending the court and it is also made explicitly clear in Rule 6 of Order 16 that he can be summoned without being summoned to give the evidence, therefore, the apprehension of the learned Counsel for the petitioner that petitioner will lose his right to cross-examine the person who has been summoned, has no legal foundation. The person summoned to produce the document Under Rule 6 of the Order 16 is not even required to give evidence and there is no examination-in-chief then there arises no question of cross-examination. It is therefore, relevant from the order 16 Rule 1 CPC that this choice of the plaintiff, to call a person as witness alongwith document so as to depose before the court of law and produce the document and give evidence on oath with respect to the documents sought to be produced but when the party summoning the document did not want to have the statement on that person who produces the document then he can ask for summoning a person to produce document without giving any evidence on the oath.

18. In view of the totality of the facts as mentioned above when the trial court has jurisdiction to summon the document and exercised the jurisdiction to summon the document and the document is relevant for the just decision of the suit and photostat copy of the document is not admitted by the petitioner, the original document is required to be summoned. The judgment relied upon by the learned Counsel for the petitioner wherein it is mentioned that "before calling for the records or documents in the other court from the pending proceedings, the Court calling for the records and documents must bear in mind that it hampers the further progress of the proceedings before the other Court. Therefore it must be careful to find out whether such documents and records are absolutely necessary for deciding the case before it. Then only it should call for those documents and records wherever the originals of the same are necessary, and in cases where the originals are not necessary, the same should not be called for, unless it is not possible for the applicant to obtain and produce the authenticated copies of the same.

19. The above decision given by the Hon'ble Judge of the Karnataka High Court

took note of the fact that because of calling of the record of the courts without application of mind and without examination of the fact, whether the original records necessary are not causing the delay in the proceedings of the other court. Here in this case, the documents sought to be called are not from the file of any proceeding pending before the court. Nothing has been shown that by summoning the document any proceedings of even before, the concerned authority will be delayed and, therefore, this judgment cited by the learned Counsel for the petitioner has no application in the facts of this case.

20. Learned Counsel for the non-petitioner relied upon the judgment of this court delivered in Smt Snehlata and Ors. v. Paras Mal reported in 1994 DNJ (Raj) 74 wherein the same objection that the documents can be summoned Under Order 13 Rule 10 CPC are the only documents from any court and not from any other office. In this case the trial court rejected the application for summoning of the documents from the Income Tax Department by order dated 5th October, 1993. This court held that the trial court should have summoned the desired record from the Income Tax Officer, Jodhpur and also that the trial court has committed material irregularity in exercise of jurisdiction while rejecting the application. This court in the above judgment narrated that what procedure should have been adopted in this matter but revision petition challenging the order dated 5th October, 1993 was allowed. Since in the above case, the application of the petitioner was rejected, therefore, the petitioner was directed to adopt the procedure but here in this case, when the court has passed the order of summoning of the record though on the application Under Order 13 Rule 10 CPC, which could have been passed Under Order 16 Rule 6 CPC in a different manner then there is no reason to interfere in the order under challenge.

21. In view of the above reasons, I do not find any substance in this revision petition. Hence, the revision petition is dismissed.