

(2008) 12 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : C. Rev. No. 23 of 2008 and CMP No. 28 of 2008

Lalita Karki and Others

APPELLANT

Vs

Vijay Singh (Col. Rtd.)

RESPONDENT

Date of Decision : 04-12-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 7 Rule 14, Order 7 Rule 14(1)

Citation : (2010) 2 JKJ 263

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Hali, J

1. The sole question in this revision petition is whether a party can be equated with the witness and whether a document not being relied upon by any party can be produced at a later stage.

2. A suit has been filed by the Respondent before the court below seeking possession of the house known as Durga Niwas situated at Amphalla,

Jammu. The statement of the Defendant was recorded by the trial court and while cross-examining the Defendants a Will was confronted by the

Plaintiff to the Defendant. The objection was raised by the learned Counsel for the Defendant/Petitioner that this document cannot be tendered in

evidence, especially when no permission as warranted under Order 13 Rule 2 of CPC has been obtained by the Plaintiff/Respondent.

3. On the other hand, the learned Counsel for the Plaintiff/Respondent contended that the production of such document is not barred under Order

7 sub Rule 18 of Code of Civil Procedure. He states that Order 7 Rule 18 sub Rule

2 of CPC permits the Plaintiff to introduce the documents for cross examination of Defendant/witness.

4. I have heard the learned Counsel for the parties and perused the record.

5. Contention raised by the Plaintiff is that no permission has been sought from the court under Order 13 Rule 2 of CPC to file the document. It is

also contended that the Order 7 rule 18 of CPC permits production of documents in cross examination of Defendants witness only. He also states

that a party cannot be a witness, as according to him, the witness is not bound by the pleadings of the parties.

6. For facility of reference Order 7 Rule 18 of CPC is quoted here in below:

Inadmissibility of document not produced when plaint filed.

1) 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, and which is not produced or entered accordingly, shall not, without the leave the Court, be received in evidence on his

behalf at the hearing of the suit.

2) Nothing in this rule applies to documents produced for cross examination of the Defendant's witnesses, or in answer to any case set up by the

Defendant or handed to a witness merely to refresh his memory.

7. The case of the Plaintiff/Respondent is that he wants to confront the Defendant in cross examination regarding the document i.e. Will.

8. It is further stated that the Plaintiff does not rely on the said (sic) pleadings, but only wants to confront the Defendant in cross examination to

refresh his memory. While analyzing the import of Order 7 Rule 18 of Code of Civil Procedure, it is necessary that permission of the court to

produce the document is sought only when the party relies on the said document, which was under his possession at that time. In the present

circumstances, it is evident that the Plaintiff/Respondent does not rely on such documents in his pleadings.

9. In my opinion there is no requirement to seek permission of the court once the party does not rely on that document. In other words, the

prohibition as imposed by Order 13 Rule 2 of CPC could be applicable only to those documents which are required to be filed by the Plaintiff

under sub Rule 1 of Rule 14 Order 7 Code of Civil Procedure. The documents

which may be produced by the Plaintiff for the purpose of impeaching the testimony of any witness including the opposite party or for the purpose of answering to any case set up by the Defendant or the documents which in tended to be used only for refreshing the memory of the witnesses, do not appear to be covered by Order 7 of Rule 14 of Code of Civil Procedure. From the aforementioned discussion, there is no hesitation in holding that no permission is required when a document which is not basis of the claim and is not relied upon the Plaintiff as evidence to support his claim, to be filed in original in the Court under Order 7 Rule 14 of Code of Civil Procedure. The provisions of Order 13 Rule 2 would not apply in such cases. Explanation to Order 7 Rule 14 of CPC provides that:

no documentary evidence in the possession of power of any party which should have been produced but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof;

10. So both these provisions i.e. Order 7 Rule 14 of CPC and Order 13 Rule 2 of CPC relate to issues where a party, relies on such document and has to produce it alongwith the plaint. Order 7 Rule 18 sub clause 2 of CPC is a provision which is attracted in different perspective as stated hereinabove. I, therefore, hold that the Respondent /Plaintiff has right to confront the Defendant in cross examination about the document for which no permission is required.

11. The second question arises for consideration is as to whether the provision can be invoked only when Defendant's/witness are under cross examination or it can be invoked against the Defendant also. In order to understand, this issue the following provisions are required to be taken note. A party is required to prove his case by relying statement of witnesses in relation to the matters and the facts under enquiry. Evidence is defined as:

Evidence"" - Evidence"" means and includes:

1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

2) all documents (including electronic records) produced for the inspection of the Court;

such documents are called documentary evidence.

12. The definition clearly indicates that all statements which the court permits or requires to be made before it by witnesses in relation to the

matters of fact under the enquiry, on the basis of which the party is required to prove the case is evidence. The definition does not make a

distinction between the statements made by a witness or a party. The party can also prove his case by making his statement as a witness under

Order 18 Rule 3-A of Code of Civil Procedure. It is evident that witness is a person who is required to make a statement in relation to the matter

of facts under enquiry and such statements are called as evidence.

13. So, it is essential that statement made by a person in relation of facts under enquiry can be called a witness. Conjoint reading of the provisions

shows that parties can also be a witness, as he is required to make a statement in support of the facts. I, therefore, hold that expression

Defendant's/witness used under Order 7 Rule 18 sub Rule 2 of CPC include the Defendant itself.

For the reasons mentioned above, I find no merit in this revision petition, which stands dismissed alongwith connected CMP.

The parties are directed to appear before the court below on 18-12-2008.