
(2020) 02 RAJ CK 0425
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1769 Of 2020

Lichhami Devi And Ors

APPELLANT

Vs

Tilak Raj And Ors

RESPONDENT

Date of Decision : 24-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151
Evidence Act, 1872 — Section 65

Citation : (2020) 02 RAJ CK 0425

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Trilok Joshi

Final Decision : Dismissed

Judgement

This writ petition has been filed by the petitioners aggrieved against order dated 23.01.2020 passed by the trial court, whereby, the application filed by the plaintiffs under Section 151 CPC has been allowed and permission has been granted to exhibit the disputed power of attorney as secondary evidence.

It is, inter alia, indicated in the writ petition that Roshan Lal father of the plaintiffs-respondents No.1 to 5 executed a registered sale deed dated

20.03.2004 through his power of attorney holder Kunan Ram with regard to an agricultural land in favour of Smt. Lichhmi Devi wife of Kunan Ram;

Roshan Lal died on 22.06.2014 and after his death his sons filed the civil suit for cancellation of the sale deed against the petitioners-defendants â?

Smt. Lichhmi Devi and others.

A written statement was filed and the averments made in the plaint were denied. However, a photocopy of the power of attorney dated 01.05.2002

was filed with the written statement.

During pendency of the suit, after issues were framed by the trial court, the plaintiffs filed application under Order XI, Rule 14 CPC for production of documents i.e. sale deed and original power of attorney from the defendant Nos. 1 and 2 (petitioners).

A response was given by the petitioners' counsel indicating that copy of the sale deed and power of attorney have been filed along with written

statement and the original power of attorney was produced before the Sub-Registrar at the time of registration of sale deed. Based on the said

submissions, the application filed under Order XI, Rule 14 CPC was disposed of.

Whereafter, the plaintiffs filed an application under Section 65 of the Evidence Act, 1872 (the Act) for taking into consideration the photocopy

of power of attorney dated 01.05.2002 as secondary evidence.

The trial court allowed the application and granted permission for leading secondary evidence qua the power of attorney.

Whereafter, the plaintiffs-respondents filed application under Section 151 CPC, inter alia, indicating that though copy of the power of attorney has

been produced by the defendants, qua which, application under Section 65 of the Act filed by the plaintiffs has been allowed, the plaintiffs may be

permitted to exhibit the said power of attorney.

Reply to the said application was filed, inter alia, contesting the application on the ground that a document produced by the defendants cannot be

marked as exhibit by the plaintiffs.

The trial court after hearing the parties allowed the application by its impugned order dated 23.01.2020, inter alia, on the ground that the power of

attorney was an important and essential document, which was necessary to be exhibited for a just decision and permitted marking the same as exhibit

by way of secondary evidence.

It is submitted by learned counsel for the petitioners that the plaintiffs-respondents cannot be permitted to take advantage of the documents filed by

the defendants. The plaintiffs can only cross-examine the defendants at the time of their evidence and at that stage they can mark the document

produced by defendants as exhibit while confronting the defendants/defendants' witnesses and the document in question cannot be used by the

plaintiffs as part of their statement in chief.

Based on the said submissions it was emphasized that the order passed by the trial court in this regard deserves to be quashed and set aside.

However, no provision of law in support of the submission has been cited.

I have considered the submissions made by learned counsel for the petitioners and have perused the material available on record.

The facts are not in dispute, wherein, the plaintiffs have filed the suit alongwith documents under Order VII, Rule 14 CPC and the defendants have

filed written statement alongwith documents under Order VIII, Rule 1A CPC. Once the documents are filed alongwith plaint and the written

statement they form part of the record.

The provisions under Order VII, Rule 14 and under Order 18 Rule 1A CPC require production of documents, on which, the plaintiff sues or relies and

documents upon which the defendant claims relief or relies for his defence, respectively. There is no express provision in the CPC, either permitting or

restricting the marking of a document as exhibit produced by the opposing side.

The submission made that the document produced by the defendants can only be used for confronting the witnesses of the defendants or the

defendants themselves, based on the provision of Order VII, Rule 14(4) CPC is apparently misplaced, inasmuch as, the said provision pertains to the

documents, which are sought to be produced for the first time during the course of cross-examination of the plaintiffsâ?? witnesses or handed over to

a witness merely to refresh his memory and the same does not pertain to a document, which is already produced on record, may be by the

defendants.

In absence of any bar in law for exhibiting a document produced by the defendant alongwith his written statement under Order VIII, Rule 1A CPC, it

cannot be laid down that the such document cannot be exhibited by the plaintiff.

The submissions are being made apparently on account of the fact that the document in question, which is the basis for executing the sale deed,

though has been produced by the defendants, who are wife and son of the power of attorney holder and the sale deed has been executed by the

power of attorney holder in favour of his wife, which power of attorney is alleged as forged by the plaintiffs, therefore, the defendants want to avoid

exhibition of the document.

The circumstance wherein a plaintiff would seek to exhibit a document produced by a defendant may though be rare, on account of normally each

side producing the documents as supporting its cause either in support of the suit or for defending it, but on that count, in a scenario like the present

one, it cannot be laid down that a document produced by the defendants cannot be exhibited by the plaintiffs and vice versa.

Incidentally, it may be observed that there is no restriction even to cite the defendant as a witness on behalf of the plaintiffs as laid down in *Sri Awadh*

Kishore Singh & Anr v. Sri Brij Bihari Singh & Ors. : AIR 1993 Patna 122, wherein, it was inter alia observed that a plaintiff can examine any

witness he so likes and a witness may be a stranger, may be a man of his own party or party himself or may be a defendant or his man, therefore, if a

plaintiff wants to examine a defendant as a witness on his behalf, he cannot be precluded from examining him.

If a defendant himself can be examined as a witness by the plaintiffs, as laid down hereinbefore in the case of *Sri Awadh Kishore Singh (supra)*, there

apparently is no reason to hold that the document produced by the defendants under Order VIII, Rule 1A CPC cannot be marked as exhibit by the

plaintiffs.

In view of the above discussion, no case for interference in the order impugned is made out. The petition filed by the petitioner is, therefore, dismissed.