

(2011) 03 KAR CK 0280

In the Karnataka High Court

Case No : Writ Petition No's. 4594-96 of 2011 and Miscellaneous W. No. 2252 of 2011

M. Suresh Kothari and Mittan Lal Jain

APPELLANT

Vs

Mr. Hariram Thakkar, Mr. Piyush Periwal, Mr. Dilip Kr. Khatai
and Gajanand Madanlal Periwal Charitable Trust

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 1, Order 18 Rule 17, Order 18 Rule 7, 138

Citation : (2011) 03 KAR CK 0280

Hon'ble Judges : Abdul Nazeer, J

Bench : Single Bench

Advocate : B.S. Satyanand, for the Appellant; B. Shekarappa. Advocate for R-2, R-3 and R-4, for the Respondent

Judgement

Abdul Nazeer, J.—Though these matters are posted in the orders list, by consent of learned Counsel for the parties, they are taken up for hearing, heard and disposed of by this order.

2. The Petitioners are the Plaintiffs in O.S. No. 1619/2009 on the file of the Civil Judge (Sr. Dn.), Nelamangala and the Respondents are the Defendants. The Plaintiffs filed the above suit for specific performance of the agreement for sale dated 8.3.2006 and for certain other reliefs, the Defendants have filed their written statement. The Plaintiffs filed I.A. No. 17 under Order 18 Rule 17 of the CPC for recalling of the order dated 12.1.2011 and to re-open the case and permit them to lead further evidence, I.A. 18 under Order 18 Rule 7 of the CPC to correct certain errors said to have been recorded by the Trial Court in the cross-examination of P.W.2 dated 12.1.2011 and I.A. 19 under Order 17 Rule 1 of CPC to defer/adjourn the cross-examination of D. Ws. 1 and 2 The court below has dismissed the applications by its order dated 21.1.2011. The Plaintiffs have challenged the validity of the said order in these writ petitions.

3. Learned Counsel for the Respondents submits that he has no objection for setting aside the orders on I.A. Nos. 17 and 19 and for allowing the Plaintiffs to lead further evidence and to permit them to cross examine D. Ws. 1 and 2.

4. In so far as I.A. 18 is concerned, learned Counsel for the Petitioner submits that in the cross-examination of P.W.2 dated 12.1.2011 in line Nos. 3 and 7 of paragraph 2, the word "2007" has been wrongly typed, instead of typing it as "2006". Similarly, line No. 3 of paragraph 3 of the cross-examination of P.W.2, the sentence should have contained the word "not". In order to correct the typographical errors in the cross-examination of P.W.2, the Plaintiffs filed I.A. 18 along with an affidavit of P.W.2. In the affidavit, P.W.2 has stated that he has not deposed in his cross-examination that the year of execution of the agreement was 2007. He has stated the year of execution of agreement was "2006". The suggestion made to him by the learned Counsel for the Defendant was denied by stating as "It is not true to suggest that the possession was not delivered at the time of memorandum of understanding". However, the word "not" has not been typed in the said sentence. It is further argued that the aforesaid typographical error will have a serious bearing on the merits of the case. Therefore, it requires to be corrected.

5. On the other hand, learned Counsel for the Respondents submits that he has elicited certain admissions in the cross-examination of P.W.2. The said admission cannot be withdrawn under the guise of correcting the mistake under Rule 7 of Order 18 of the Code of Civil Procedure. It is argued that Rule 7 of Order 18 cannot be made use of for withdrawing the admission made in the cross-examination.

6. P.W.2 was cross-examined on 12.1.2011. In para-2 of his cross-examination, he has stated as under:

The agreement was executed in my presence on 7.1.2006. Again I say that the agreement was executed in the month of March 2007- I have not verified the GPA. I do not know as to whether or not the said Power of Attorney was handed over to Jayaprakash. No other memorandum of understanding or other agreements executed other than the agreement executed in the month of March 2007.

In para-3 of the cross-examination of P.W.2. he has stated as under:

... It is true to suggest that the possession was not delivered at the time of memorandum of understanding....

7. In order to understand the scope of Rule 7 of Order 18, it has to be read along with Section 138 and Rules 5, 6 and 7 of Order 18 of the Code of Civil Procedure. Sub-section (1) of Section 138 of the CPC states that the High Court may by notification in the Official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English

language and in manner prescribed. Sub-section (2) of Section 138 is not relevant for the purpose of this case. Rule 5 of Order 18 provides for the procedure for recording the evidence in appealable cases. Rule 6 of Order 18 lays down the circumstances under which the deposition to be interpreted. Rule 7 of Order 18 states that evidence taken u/s 138 shall be in the form prescribed by Rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

8. A conjoint reading of Section 138 and Rules 5, 6 and 7 of Order 18 indicates that the evidence recorded in terms of the notification issued u/s 138, in the English language, which is different from the language in which it is given and if the witness does not understand the English language, it shall be read over and signed as occasion may arise, interpreted and corrected as if it were taken down under Order 18 Rule 5 of Code of Civil Procedure. The said provision does not permit withdrawal of any admissions made under the guise of correction of the mistake. In the present case, it is not the case of the Plaintiffs that P.W.2 does not know the English language. In fact, the examination-in-chief of P.W.2 filed in the form of an affidavit in English language. Taking into account the above factual and legal aspects, the court; below has rightly rejected I.A. No. 18. I do not find any error in the said order.

9. The examination of witnesses by adverse party is called the cross examination. It is the most effective of all the means of extracting the truth and exposing falsehood. It is not an empty formality, but the valuable right to substantiate the defence. If a witness makes certain admissions in the cross-examination, the same cannot be withdrawn under the guise of correction of the mistake under Rule 7 of Order 18 of the Code of Civil Procedure. if it is permitted, the very object of cross examination will be defeated.

10. In the result, I pass the following order:

(i) The order on I. As. 17 and 19 are hereby quashed. I.A. Nos. 17 and 19 are allowed. The Plaintiffs are permitted to lead further evidence. They are also permitted to further cross-examine D. Ws.1 and 2.

(ii) The order on I.A. 18 is sustained.

(iii) On an earlier occasion, this Court in W.P. No. 23188/2010 disposed of on 10.8.20310 had directed the court below to dispose of the suit on or before 28.2.2011. However, in these writ petitions, this Court had granted interim order staying further proceedings in the suit. Therefore, time for disposal of the suit requires to be extended. The court below is directed to dispose of the suit on or before 30.9.2011.

(iv) The writ petitions are disposed of accordingly.

(v) In view of the disposal of the writ petitions as above, Misc. W. No. 2252/2011 does not survive for consideration. It is accordingly dismissed. No costs.