
(1922) 07 PAT CK 0015
In the Patna High Court

Manbodh Missir

APPELLANT

Vs

Bhairo Missir and Others

RESPONDENT

Date of Decision : 18-07-1922

Acts Referred:

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

Citation : AIR 1922 Patna 569 : 77 Ind. Cas. 848

Hon'ble Judges : Dawson Miller, C.J;B.K. Mullick, J

Bench : Division Bench

Judgement

Dawson Miller, C.J.—This is an appeal on behalf of the plaintiff from a decision of the Subordinate Judge of Shahabad, dated the 19th August 1920. The suit was instituted by the plaintiff against four defendants claiming that, as the next reversioner of the deceased husband of the defendant No. 4 he was entitled to a declaration that certain dispositions of the property of her husband made by the fourth defendant of which she was entitled to possession taking the interest of a Hindu widow, were not binding upon him as the reversioner, and were valid only during the lifetime of the fourth defendant. The plaint WPS filed on the 17th September 1917. No documents were filed with the plaint and no list of documents relied upon by the plaintiff in support of his case was attached to the plaint. On the 18th January 1918 the written statement of the defendant was filed and from that it appeared that the defendants were setting up a case that the plaintiff was not the nearest reversioner to the deceased husband of Sahodra, the defendant No. 4. TO the plaint the plaintiff as part thereof had attached a genealogical tree showing that Mahesh, the husband of the fourth defendant was the son of Tirloke and the grandson of Juthan, Juthan being the great grand-father of the plaintiff. In the written statement it was admitted that Mahesh was the son of Tirloke but it was alleged that Tirloke was not the son of Juthan, the plaintiff's great grand-father, but the son of Basti, the brother of Juthan, and if that case could be made out, it would appear that the plaintiff was not the next reversioner to Mahesh after the death of Sahodra, his widow. On the day when the written statement was filed an order was made by the Munsif to

put the case on the 29th January 1918 for settlement of issues and on that day the issues were settled and the hearing was fixed for the 6th March following. An order was also made at the same time that the parties were to file documents within two weeks. It is clear, therefore that the learned Munsif treated the day fixed for the hearing of issues as the first hearing of the suit and gave the parties two weeks further time to file their documents. One point has been raised before us in this appeal as to whether where a day has been fixed for the settlement of issues only, and the issues are settled upon that day and nothing further done, that day can be considered as the first hearing of the suit. In the view we take of this case, however, it is unnecessary to decide that point. On the 6th March 1918, the day which had been fixed for hearing, certain documents were filed by the plaintiff. The hearing, however, did not take place on that day, it was adjourned from time to time, and in fact the case came on the 12th May 1919.

2. At the trial the plaintiff's Pleader tendered for the purposes of having them proved the documents which he had filed on the 6th March 1918. These documents were rent receipts over 30 years old granted by the Court of Wards to Tirloke, the person whose parentage was called in question in the suit by the defendants. The rent receipts which bear the seal of the Court of Wards and purport to bear the signature of the Manager at that time described Tirloke as the son of Juthan, as the plaintiff contends, and not as the son of Basti which is the defendants' case.

3. The learned Munsif refused to allow these receipts to be proved on the ground that the parties were directed to file their evidence within two weeks of the 29th January 1918 when the issues were framed and the documents had not in fact been filed until the 6th March, the day fixed for the further hearing after the issues were settled. He did not consider at all what grounds there might have been for not having filed these documents earlier nor did he consider whether the documents were of such a nature that they might be forgeries, nor did he take into consideration any other question except the fact that they had been filed late and, therefore, on the defendants' objection they were not allowed to be proved in evidence.

4. The learned Munsif having decided the case against the plaintiffs an appeal went to the Subordinate Judge. The Subordinate Judge who only had oral evidence before him on the question of Tirloke's parentage said that on going through the oral evidence on both sides he did not find much to choose between them but in the end he agreed with the Munsif and he dismissed the appeal.

5. The only question which has been argued before us in this appeal is that the Munsif and the Subordinate Judge were wrong in refusing to admit this evidence. It is contended on behalf of the respondents that the documents in question were documents which, under the provisions of Order VII, Rule 14 of the Civil Procedure Code, the plaintiff intended to rely upon as evidence in support of his claim, and, as such, ought to have been entered in a list annexed to the plaint and, unless that was done, they could not, under the provisions of Rule 18 of the

same Order, be afterwards received in evidence without the leave of the Court. It is contended on behalf of the Appellant, on the other hand, that by Clause (2) of Rule 18 of Order VII nothing in the rule applies to documents produced for cross-examination of the defendants' witnesses or in answer to any case set up by the defendants or handed to a witness merely to refresh his memory. It is not contended that the documents came within the last category, viz., those which might be bended to a witness merely to refresh his memory but it is contended that they were documents of such a character that they might be used for cross-examination of the defendants' witnesses or, if not, that certainly they were documents which were to be used in answer to a case set up by the defendants. If in fact they were documents of that description then it follows that the plaintiff was not under any obligation to enter such documents in a list and add the list to his plaint. In such a case the learned Munsif would be wrong in excluding the documents merely because they had not bean entered in the list attached to the plaint originally. It is further contended that however that may be under Order XIII, Rule 1, whether the documents were of the nature described or not, they ought to have been produced at the first hearing of the suit and not having been produced on that occasion the Court was perfectly justified in refusing them subsequently. As I have already said they were in fact produced on the 6th March, the issues having been settled in the previous January, and if the 6th March can be properly described as the first hearing then they were produced in time. It is unnecessary, however, as I have already said, to determine that question because, in my opinion, the documents in the present case were documents of the description mentioned in the second clause of Rule 18 of Order VII that is, documents produced in answer to a case set up by the defendants. When the plaint was filed the plaintiff no doubt was setting up a case that he and Mahesh were respectively the great grand-son and grand-son of the same person and, therefore, he, in the circumstances, was the next reversioner and entitled to sue, but he did not know at that time, at all events there is nothing to suggest that he knew, that the defendants would dispute the parentage of Tirloke, the father of Mahesh and until that case was set up there appears to have been no reason why the plaintiff should rely upon the particular documents in question in support of his case. He did not know the point at which the defendants would attack or which link in the chain of the genealogical tree the defendants might consider the weakest and up to that time it was not necessary for the plaintiff to produce any documents in support of the accuracy of the genealogical table Upon which he was relying and, therefore, it appears to me that there was no necessity at the date of the plaint for him to enter the particular documents in the list and file them with the plaint. Once however the written statement was filed the case became different. A case was then set up by the defendants attacking the genealogical tree, which so far as we know, up to that time he had no reason to suspect was going to be attacked and it was then and then only that the necessity for producing these rent receipts, which went to show that the point taken by the defendants was not accurate, arose. It seems to me, in these circumstances, that the documents were clearly documents produced in answer

to a case set up by the defendants within the second clause of Rule 18 of Order VII and, therefore, it was not necessary to obtain the leave of the Court in order that they might be received in evidence. With regard to Order XIII, Rule I, here again the documents which must be produced at the first hearing, assuming in this case that the first hearing was the date upon which the issues were settled, are described as all documentary evidence of every description in their possession and power on which they intend to rely and which has not already been filed in Court and all documents which the Court has ordered to be produced. The documents upon which they intend to rely must, I think, so far as the plaintiff is concerned, refer back to Order VII, Rule 14, Clause (2) which refers*to the case where the plaintiff relies upon other documents than those mentioned in the first clause as evidence in support of his claim. Those documents which are already put in the list must be produced at the first hearing if they have not already been filed in Court and in addition all the documents must also be produced which the Court has ordered the parties to produce at that time. In my opinion, therefore, the learned Munsif was wrong in the circumstances of this case in not allowing the plaintiff an opportunity of proving the documents at the trial. The judgment and decree of the Munsif and of the Subordinate Judge will be set aside, the case will be remanded to the Trial Court to determine the issues after admitting the evidence if properly proved and considering it along with the other evidence in the case. The defendants will be allowed at the hearing to give any rebutting evidence that they may have to disprove the fact stated in the documents now in question. The costs of this appeal will abide the final result of the trial.