

(1952) 04 RAJ CK 0009
In the Rajasthan High Court
Case No : Misc. Application No. 13 of 1950

Nathulal

APPELLANT

Vs

Durgaprasad

RESPONDENT

Date of Decision : 23-04-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 45 Rule 7(1)
Supreme Court Rules, 1966 — Order 15

Citation : (1952) RLW 507

Hon'ble Judges : Sharma, J;Ranawat, J

Bench : Division Bench

Advocate : B.B. Sharma, for the Appellant; P.C. Bhandari, for the Respondent

Judgement

Ranawat, J.—In connection with preparation of the record for the purpose of an appeal to the Supreme Court, this case has been referred for decision by the Deputy Registrar. Leave to appeal to the Supreme Court was granted by this Court to the defendant Nathulal on 19-11-1951 (See Nathu Lal Vs. Durga Prasad, and the record of the case is now being prepared under Order 15, Sen. I of the Supreme Court Rules. Documents Nos. 11 to 16 appearing in the list filed by Durgaprasad are desired to be included in the record but an objection is raised by the opposite party that these documents should be excluded from the record and they should not be printed. These documents were prepared after the decision of this Court was given and when the petition for leave to appeal was pending in this court. They relate to the question of the valuation of the disputed property.

Mr. Bhandari has urged that he is going to raise a preliminary objection in the Supreme Court regarding validity of certificate to leave to appeal and in that connection documents Nos. 11 to 16 would be relevant. Mr. Sharma, who appears on behalf of the opposite party concedes that these documents would be relevant if such an objection is raised by the appellant before the Supreme Court. But it is contended by him that the record in the meaning of Order 15, Schedule

I of the Supreme Court Rules, means a record of the suit up to the time of the decision of this Court, and the documents which did not form part of the record up to the time of the decision of the High Court, cannot be included in the record which is to be prepared for the Supreme Court. He has cited --"Sripat Singh v. Budha Singh" AIR 1921 Pat 124 wherein the following observations appear:

"Now the papers which the appellant wishes to include in the present case are papers which came into existence after the decision of the High Court which is the subject-matter of the appeal. They were not on the record at the time when the appeal was heard and could not have been on the record and therefore they form no part of the record or of the papers which ought to be printed in the paper book for the purposes of, this appeal. The appellant has not shown us in any way how they can have any relevancy upon the matters in dispute which will have to be determined by their Lordships of the Privy Council."

2. Mr. Bhandari has tried to distinguish the Patna ruling by saying that the argument in that judgment has been based on the language of the Orders-in-Council which are somewhat similar to the rules contained in Order 15, Schedule I of the Supreme Court Rules. The language of Order 45, Rule 7, Civil P. C. was, however, not considered in that judgment, and it is urged that in Order 45, Rule 7 (1) (b), Civil P. C, the words are "the whole record of the suit" and the term "suit" even though it has not been defined in the Civil Procedure Code, should be taken to include all proceedings in a suit up to the stage of execution.

In this connection -- "Fakirullah v. Thakur Prasad" 12 All 179 has been referred to wherein execution proceedings have been treated to be included in the meaning of the word "suit" in connection with the procedure prescribed by Section 141, Civil P. C. It is, therefore, urged that taking the word "suit" to have been used in a comprehensive sense, it should be taken to include the proceedings for leave to appeal to the Supreme Court and thus all those papers which were part of the record of this Court relating to leave to appeal should be considered to be part of the record in the meaning of Order 45, Rule 7, Civil P. C.

3. In the judgment of the case reported in --"AIR 1921 Pat 124" "record" has been taken to be the record of the case up to the time of the decision of the High Court only. But in that case the papers which were desired to be included in the paper book were not shown to be relevant for the decision by the Privy Council. The term, "suit" can be taken to include all proceedings from the time of the filing of the suit up to the stage of execution and the documents which formed part of the record of this Court relating to the petition for leave to appeal can also be regarded to form part of the record of the suit, and if such documents are relevant for the decision of the case there appears no reason why they should not be included in the printed record of the case. The learned counsel on either side have agreed that the documents which are desired to be included in the paper book in the present case are relevant and their inclusion in the paper book would help the Supreme Court to decide a preliminary objection, if raised, regarding validity of the certificate issued by this Court.

4. We, therefore, hold that the documents Nos. 11 to 16 should not be excluded from the paper book. As regards documents Nos. 1, 2, 4 to 10, and 17 Mr. sharma has agreed that they are relevant and should not be excluded from the paper book. Document No. 3 is the original written statement which was subsequently amended and an amended written statement has been included in the paper book. Consequently, document No. 3 can safely be excluded from the paper book.

5. The Deputy Registrar should now proceed to prepare the record of the paper book accordingly.