

(2020) 02 DEL CK 0062

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 150 Of 2020, Civil Miscellaneous
Application No. 4900, 4901 Of 2020

Navshakti Educational Society

APPELLANT

Vs

Laxman Public School & Ors

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Order 18 Rule 3A, Order 7 Rule 14

Citation : (2020) 02 DEL CK 0062

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, Prashant Mehta, Ishita Choudhary, Prabhat Raman, I.S. Alag, Rajinder Singh, Zubin Singh, Aashima Kaushik, Praveen Singh, H. Singh Wadhwa, Moni Chanden, Shobhana Takiar, Shweta Anand

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. The present is a classic case which shows what is ailing the recordal of evidence in civil suits. A suit was filed by Navshakti Educational Society

â?" the Plaintiff, against the Defendants seeking declaration and injunction, way back in September, 1984. The reliefs sought in the suit are as under:-

â??47. That the plaintiff prays that a decree be passed in favour of the Plaintiff and against the defendants for:-

(a) Declaration to the effect that none of the defendants 1 to 7 have any right interest or claim to run, manage and control the Laxman

Public School and that the plaintiff alone has the right, interest and authority to run, manage and control the said school through the

managing committee duly constituted and appointed by it as per the provisions of the Delhi School Education Act and the Rules framed

thereunder, under its supervision and control, and,

(b) The defendant No. 8 has no right, authority, or justification to cancel the lease in respect of the plot of land in question and/or to

resume the possession thereof, to deprive the plaintiff society of the said plot and to allot, transfer or convey the same to any of the

defendants or any other person or body and the letter dated Aug. 2, 1982 is wholly arbitrary, illegal, malafide, collusive, wrongful, void

and without jurisdiction.

(c) A permanent injunction restraining the defendants 1 to 7 from running, managing and controlling the Laxman Public School and from

interfering in the management and control of the said school by the plaintiff society through the Managing Committee constituted by it and

restraining the defendant No. 8 from cancelling the lease of the plot in question and/or from resuming the possession of the said plot, or

acting upon the letter dated 2.8.1982, allotting, transferring or conveying the same to any of the defendants or any person or body other

than the plaintiff and restraining the defendants 1 to 7 from raising any construction on the plot of land and or from changing its nature

and character in any manner whatsoever and from claiming any rights or interests in the said plot of land.

(D) Mandatory injunction directing the defendants No. 1 to 7 to hand over the charge, control and management of the Laxman Public

School to the plaintiff and to remove themselves from the school premises and not to enter the school premises and deal with any matter or

affairs on the school and not to represent the school before the Directorate of Education and any other authorities as owners and or

managers of the school or otherwise.

(e) Any other relief which this Honâ??ble Court deem just and think fits in the circumstances of the case be also granted.

(f) the costs of the suit be also awardedâ??

2. Written statement was filed by the Defendants in January, 1985. Issues were framed in the suit. Vide order dated 5th November, 1992, a Local

Commissioner was appointed for recording the evidence of the official witnesses. The said order reads as under:-

â??At the request of the parties, Miss Vibha Makhija, who is present in court

(Chamber No. 433, Lawyers Chambers, High Court of Delhi),

is appointed as Local Commissioner to record the evidence of the official witnesses. The Local Commissioner is directed to complete the

execution of commission within 3 months from today. The Ld. Counsel for the parties would appear before her on 9th November, 1992 at 1

P.M. The Registry is directed to make the relevant files available to her. The Dealing Assistant would carry the files as and when required

by the Local Commissioner. The Local Commissioner shall be --(illegible)-- paid Rs. 5,000/- to be shared by the Plaintiff and Defendant No.

1. The Dealing Assistant shall be paid Rs. 100/- per hearing. The Registry is directed to issue summons for appearance of the official

witnesses before the Local Commissioner. Let this be placed before the court for further directions on 26th February, 1993.â??

3. As can be seen from the above order, three monthsâ?? time was given to complete the execution of the commission, however, for a period of ten

years, the evidence before the Local Commissioner did not conclude, for whatever reasons. On 9th August, 2002 due to the increase in the pecuniary

jurisdiction of the High Court, the suit was transferred to the District Court. On 16th December, 2002, the Id. ADJ took note of the fact that only 7 to

8 official witnesses had been examined in ten years and accordingly, the record of the Local Commissioner was called for. Thereafter, on 4th June,

2003, the Id. ADJ terminated the mandate of the Local Commissioner and the evidence recordal commenced before the Court itself.

4. Between 2003 to 2011, various official witnesses were examined before the Court. Sometime in 2015, the Plaintiff sought to place on record the

affidavit of Shri Purshottam Goyel - PW8 and in 2016, the affidavit of PW -9, Shri Prabhat Raman, Secretary of the Plaintiff Society was also filed.

However, recording of evidence of these two witnesses did not commence, as the Plaintiff had moved an application under Order VII Rule 14 CPC

seeking to place on record various additional documents. The said application was filed on 18th July, 2016 and has been decided by the impugned

order dated 22nd January, 2020. The Id. ADJ has held in the impugned order that the Plaintiff has unduly delayed the recording of evidence in the suit.

Accordingly, while dismissing the application, the Plaintiffâ??s evidence has also been closed. The observations of the Id. ADJ are set out

hereinbelow:-

â??This is a suit for declaration and injunction pending since 1984, wherein issues were settled on 25.11.1998. It is pertinent to mention

herein that the plaintiff got examined 7 witnesses in between the year 2003-2011 and all of them are formal witnesses. It is also pertinent to

mention here that there is only one affidavit of the material witness i.e. Sh. Prabhat Raman which was filed on 18.07.16. It is furthermore

pertinent to mention here that the plaintiff has already availed ample opportunities for the examination of his witnesses.

â?!

No list of witnesses was filed by the plaintiff well within the time granted by the court nor was it filed on the subsequent dates but was filed

only on 15.07.1991 i.e. after the expiry of around 3 years since framing of issues. The first witness from the side of the plaintiff was

examined on 23.07.2003 The affidavit of present witness was filed by the side of plaintiff only on 18.07.2016 i.e. after a long gap of 28

years since the framing of issues for the reasons best known to the plaintiff. On 28.07.2003, this witness has appeared but did not come to

the witness box for want of some record, which was not summoned from DDA and Honâ??ble High Court (as reflected in ordersheet). It

was the duty of the plaintiff himself to take all the requisite steps for examination of his witness on the date fixed for which he has failed.

The present witness also did not appear/turn up to the court when other witnesses were examined in this case i.e. on 03.09.2003,

09.08.2004, 13.12.2004, 27.07.2005, 06.01.2010, 03.08.2010 and 07.02.2011. The present witness even never bothered to appear to

depose in this case on the subsequent dates for several years. The present witness has put his appearance on 16.11.2015, but since his

evidence affidavit was incomplete and was even not attested by Oath Commissioner, time was granted for filing of the affidavit. Ultimately,

the plaintiff was pleased to file his affidavit (running into 182 pages) on 18.07.2016 alongwith voluminous documents, which are under

consideration.

Trial Courts are custodian of public time and money. A judicial trial cannot be conducted and carried out at the mercy of parties. No doubt,

a court has to accommodate the parties as its primary duty is effective adjudication of the case in hand, but that in no case means that it

should turn a blind eye and allow injustice to happen. The record of the present case reflects gross inactiveness and dilatory tactics

adopted by the plaintiff.

Accordingly, present application is dismissed and even, PE also closed.

Be listed for DE on 06.02.2020. Advance copy of the affidavits be supplied to the plaintiff. It is clarified that no further time shall be

granted to the defendants to conclude DE as the suit is already more than 25 years old.â??

The above order is under challenge in this Petition.

5. Ld. Senior Counsel for the Plaintiff submits that the Plaintiffsâ?? evidence barring the official witnesses has been closed, though the affidavits of

the two witnesses, PW8 and PW9 were filed in 2015 and 2016. It is urged that the application under Order VII Rule 14 CPC was repeatedly argued

before various judicial officers and despite being reserved for orders on two occasions, no orders were passed. It is further submitted that the initial

order dated 5th November, 1992 appointed the Local Commissioner only for examining the official witnesses, and not the parties themselves. Thus,

the Plaintiffsâ?? two witnesses ought to be given an opportunity. It is further submitted that the application under Order VII Rule 14 CPC was

required to be filed for placing on record certified copies of pleadings and documents from different proceedings involving the society and the land in

question, as also due to the fact that the DDA official, who appeared before the Court did not produce the entire record. It is thus, submitted that the

Plaintiff-Society, which is seeking declaratory relief qua the school which is being illegally run by the Defendants ought to be given an opportunity to

tender its evidence through the said two witnesses.

6. On the other hand, Mr. I.S. Alag, Id. Senior Counsel appearing for the Defendants submits that this is a case where the Plaintiff has grossly delayed

the leading of evidence. In fact, the list of witnesses which has been filed way back on 15th July, 1991, lists PW-9 as a Part D witness who is not

required to prove any documents. Moreover, the officials from various governmental and other authorities were summoned at the behest of the

Plaintiff, and the onus was upon the Plaintiff to produce all the relevant records

through the said witnesses. The non-production of the record by the DDA cannot be a ground to delay the matter further. It is further argued that the judgement in Pradeep Khuller v Padmawati Khuller & Ors. CS (OS) 1294/2005 (Decided on 11th November, 2013) decided by a Id. Single Judge of this Court is clear that the Plaintiff has to appear as the first witness in a suit, as per the provisions of Order XVIII Rule 3A CPC unless there is a specific permission granted by the Court to the contrary. Since in this case, right from inception, the Plaintiff only wanted to rely upon the evidence of the official witnesses, at this stage, the witnesses i.e. PW8 and PW9 cannot be permitted to appear in the matter. The filing of further documents is also objected to on the ground that the Plaintiff has had adequate opportunity to summon the dealing assistant from the Delhi High Court as also the DDA officials, and hence the request for taking on record additional documents at this stage is very belated.

7. The Court has perused the documents and the pleadings placed on record, as also the orders in the suit and has heard submissions on behalf of the parties. The first and foremost issue is as to whether the additional documents should be permitted to be taken on record by means of the application under Order VII Rule 14 CPC. A perusal of the application shows that the Plaintiff wishes to place on record the following sets of additional documents:-

- (i) Records of Suit No. 1590/1986 titled Navshakti Education Society v. Lieutenant Governor of Delhi & Ors.
- (ii) Records of Suit No. 47A/1981 titled Laxman Foundation and Others v. Navshakti Education Society.
- (iii) Records of WP(C) 2185/2003, titled Laxman Public School v. DDA.
- (iv) Replies and other documents obtained from the DDA under the Right to Information Act in respect of the cancellation of the allotment of the land in question where the school is operating.

8. In so far as the first three sets of documents are concerned, all three relate to proceedings filed in the Delhi High Court. The same can be filed and relied upon at any stage by the parties and considering the nature of disputes, the same would be relevant for the adjudication of the issues arising in the suit. If certified copies of these proceedings are already on record, the same shall be exhibited without the requirement of any oral evidence being

led in this regard. If certified copies are not on record, and the authenticity of the said judicial record is not questioned, then even copies are permitted

to be exhibited. Alternatively, the Plaintiff is permitted to place the certified copies of the judicial records within a period of two weeks, which shall

then be exhibited.

9. In so far as the DDA records are concerned, the same are sought to be proved by leading the evidence of PW8 and PW9. The legal position as

contained in the judgment of Pradeep Khuller (supra) is settled, that unless there is specific permission sought from the Court for leading evidence of

the Plaintiff at a later stage, the Plaintiff ought to step into the witness box at the initial stage. The orders passed, including order dated 5th November,

1992, are not clear to the extent that counsels appearing on the said date appear to have consented to the official witnesses been examined by the

Local Commissioner. The question as to whether the same can be read as a permission to the Plaintiffs to appear at a subsequent stage is ambiguous,

and it cannot be ruled out that the same was an agreement between the parties. The language used in the order appointing the Local Commissioner,

dated 5th November, 1992, is "At the request of the parties". This

was the first time when the matter was listed for recordal of evidence, and at that stage, with the consent of parties, the Local Commissioner was

appointed for recording the evidence of the official witnesses. Since there is ambiguity in this order, it cannot be said that the Plaintiff never intended

to examine any other witness including the Plaintiff itself. The list of witnesses clearly contains the name of PW9 as a Part D witness on behalf of the

Plaintiff. Thus, since inception, the Plaintiff wished to adduce evidence in the suit. There is, however, no ambiguity in the subsequent order wherein

the Court has recorded that the mandate of the Local Commissioner is terminated and the evidence would be recorded in the Court. At this stage, the

Plaintiff could have stepped into the witness box and tendered its evidence first or sought permission to do the same which has clearly not been done.

However, for whatever reasons, the Plaintiff did not do so.

10. The question is whether the Plaintiff should now be permitted to lead evidence. The official witnesses have all been examined. A perusal of the

evidence of PW8 shows that PW8 is intending to give evidence as to the reason

why the allotment of the land was taken in the first place. The main witness i.e. the Plaintiff wishes to now step into the witness box and adduce his evidence, along with the documents of the DDA, which are stated to have been obtained under the RTI Act. The copy of the evidence by way of affidavit which has been filed shows that the same runs into 182 pages, and clearly would be beyond the scope of evidence to be led in the matter.

11. The Plaintiff has grossly delayed adducing evidence. The repeated applications, including the application for additional documents, shows that the Plaintiff was not keen on an early adjudication and enormous judicial time has been wasted. The Trial Court's observation that the Plaintiff has repeatedly delayed appearing before the Court is made out from the record.

12. However, the suit in question concerns land related to a school and as to who would be controlling the said school. The nature of the suit is such that the Court cannot ignore relevant and important evidence that the Plaintiff society wishes to adduce at this stage. The delay that has been caused, has resulted in the Defendants continuing to be in the management of the school. Thus, no prejudice is caused to the Defendants if the Plaintiff is allowed to lead the evidence of two witnesses - PW8 and PW9. Considering the nature of the suit and the nature of the adjudication that is required in the present suit, the Plaintiff is being put to terms. The following directions are accordingly issued in the present petition:-

(i) The affidavits of PW8 and PW9 shall be taken on record.

(ii) The affidavit of PW-9 running into 182 pages is, however, rejected. The Plaintiff-PW9 shall file a fresh affidavit within a period of two weeks

from today before the Trial Court which shall not run into more than 25 pages. The only documents permitted to be exhibited by PW9 with his

evidence would be the RTI records obtained from the DDA, which are sought to be placed on record, subject to the objections as to mode of proof

and admissibility.

(iii) The examination in chief of PW9 shall commence on 24th February, 2020, which is the date already fixed before the Trial Court. On the said

date, examination-in-chief of PW9 shall be recorded, as well as all the objections which the Defendants wish to take. A date shall be fixed in the

month of March for cross examination of PW9. The cross examination of PW9 shall be concluded within a period of three sessions before the Trial

Court, of not more than three hours each. After the conclusion of PW9's evidence, PW8 shall appear before the Trial Court and shall be cross

examined by the Defendants.

13. The above permission is being granted to the Plaintiff as the last and final opportunity to lead evidence in the matter, subject to payment of Rs.

5,00,000/- as costs. The costs shall be paid to the Government of NCT Delhi, to be utilised for educational purposes in government schools. No further

opportunity shall be granted. If the witnesses do not appear on the date fixed by the Trial Court, without any further orders, treating the present order

as peremptory, the evidence of the Plaintiff shall stand closed. If the Defendants wish to amend their list of witnesses, they may file a list of witnesses

within two weeks before the Trial Court. The costs paid today shall be treated costs in the suit, and shall abide by the final orders in the same.

14. With these observations, the petition with all pending applications is disposed of.