
(2011) 01 GAU CK 0002
In the Gauhati High Court
Case No : Case No. CRP 301 of 2010

Nepal Das and Madhubala Das	Vs	APPELLANT
Adhiti Deori, Benu Deori and Padma Deori		RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Order 11 Rule 12, Order 12 Rule 3A,
Order 12 Rule 6, Order 13 Rule 1(1), Order 6 Rule 2(1)
Evidence Act, 1872 — Section 91, 92

Citation : (2011) 2 GLT 336

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : Z. Alam, D. Sharma, K. Konwar and B. Bishaya, for the Appellant;
M.H. Choudhury, L.N. Choudhury and W. Rahman, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The opposite party herein, as Plaintiffs, instituted Title Suit Page void and that the boundary given in the registered sale deed No. 713 is incorrect and the same is not in respect of the land of Schedule-B and that the decree, obtained, in Title Suit No. 12/2003, by the principal Defendant Nos. 1 and 2, is a decree obtained by fraud and the same is not binding in respect of one bigha of the land of Schedule B to the plaint, the case of the Plaintiffs-opposite party herein being as under:

Late Bangshidhar Deori, father of the Plaintiffs and the principal Defendant Nos. 3 to 7 was the original pattadar of the suit land measuring 35 bighas 2 kathas and 4 lechas. While the suit land was covered by annual patta bearing No. 58(New) and 55(Old) and the same contains six bighas. Later on, the entire land of the said annual patta was converted into a periodic patta land being No. 111 in the name of the principal Defendants No. 3 to 7 alone on payment of the premium. On payment of the premium, the dag numbers of the annual patta were changed and also some adjacent dags were joined into one dag. The new

dags being 45 containing an area of 27 bighas 1 kathas and 7 lechas, the dag No. 75 containing an area of 3 bighas 3 kathas and 11 lechas and also the dag No. 213 containing an area of 27 bighas 1 kathas and 7 lechas were allotted. Thereafter, the principal Defendants No. 3 to 7, who are legal heirs of late Bangshidhar Deori sold out a plot of land measuring 14 bighas out of 27 bighas 1 katha and 7 lechas covered by dag No. 213 of periodic patta No. 111 of the principal Defendant No. 1 by executing a sale deed being No. 713/2000. Thereafter, principal Defendant Nos. 3 to 7 again sold a plot of land measuring 13 bighas 1 katha and 7 lechas covered by dag No. 213 to the principal Defendant No. 2, Smti Madhubala Das, by executing a sale deed No. 720 dated 09.10.2000 without having possession upon the entire land. The principal Defendant No. 2 purchased the same, but failed to take possession upon the purchased plot of land as the same has been under the possession of the Plaintiffs on receiving a share portion of their father's property. The Plaintiffs also contended that the landed properties were equally partitioned amongst the legal heir of the original pattadar, namely, late Bangshidhar Deori, and accordingly the Plaintiffs have been cultivating their shared portion of land on Adhi basis. Schedule A to the plaint contains the plot of land measuring 27 bighas 1 katha and 7 lechas covered by dag No. 213 of Periodic Patta No. 11 and Schedule B contains the plot of land measuring 10 bighas 1 katha and 2 lechas, which is a part of the Schedule-A and Schedule-C describes the two registered sale deed being No. 720 dated 09.10.2000 and 713 dated 30.09.2000. On 01.11.2007, the Plaintiffs came to know that the Defendants No. 1 and 2 tried to dispossess their Adhiers, i.e., the proforma Defendant Nos. 1 to 7 from Schedule B land on the basis of two sale deeds, namely, sale deed No. 713/2000 and sale deed No. 720/2000. The Plaintiffs accordingly instituted a Title Suit, which gave rise to Title Suit No. 04/2008 for determination of their rights, title and interest and confirmation of possession. With the help of the said suit, the Plaintiffs further prayed for declaration in respect of the two sale deeds mentioned in Schedule C as null and void.

2. The Defendant Nos. 1 and 2 filed a joint written statement, their case being that of denial, the denial being to the effect that the Plaintiffs are not legal heirs of late Bangshi Dhar Deori and that the Plaintiffs are not entitled to claim any right over the suit land by way of inheritance or by way of succession, the Defendant Nos. 1 and 2 are bona fide purchasers by virtue of the said two sale deeds, namely, sale deed No. 713, dated 30.09.2009, and sale deed No. 720, dated 09.10.2000. Their names stand mutated on 20.12.2000 in respect of the said land and the land records have also been accordingly corrected on 12.06.2001 and as far as the proforma Defendant Nos. 1 to 7 are concerned, they have filed an appeal being Title Appeal No. 01/2007, which is pending before the Civil Judge, Morigaon, arising out of the suit land wherein they have claimed that they purchased the entire suit land from Bangshi Dhar Deori, who also delivered possession of the land to them.

3. In course of time, issues were framed, documents were filed, the Plaintiffs"

witnesses were examined and their evidence was closed. When the suit was pending for recording of evidence to be adduced by the Defendants, the Petitioners herein, as Defendants, filed, on 03.04.2010, a petition, in the suit, which gave rise to Petition No. 249/2010, stating to the effect, inter alia, that on 06.11.2009, the Defendants had filed a petition, which had given rise to Petition No. 1119/2009, wherein it had been mentioned by them that some documents, relevant to the suit, were lying in the records of Title Execution Case No. 01/2002 in the Court of Civil Judge, Morigaon, and that those documents could not, therefore, be submitted in the present suit. It was also pointed out by the Defendants, as Petitioners, in their subsequent Petition No. 249/2010 aforementioned, that in their earlier petition (which had given rise to Petition No. 1110/2009), they had, however, not mentioned as to what the relevant documents were. In their subsequent petition (which the Defendants herein filed on 03.04.2010 and which had given rise to Petition No. 249/2010 aforementioned), the Defendants mentioned as many as six documents as the documents, which they wanted to produce in the Court, these documents being (1) a registered sale deed No. 713, dated 30.09.2000, (2) a registered sale deed No. 720, dated 09.10.2000, (3) Jamabandi copy of village Karchoabari, Mouza Monaha, PP No. 111, Dag No. 213, (4) School (transfer) Certificate issued by Head Master of Konwar Gaon Primary School on behalf of Smti Aditi Deori (Photostat), (5) School (transfer) Certificate issued by Head Master of Konwar Gaon Primary School on behalf of Smti Padma Deori (Photostat) and (6) A certificate issued by Sri Amiya Bordoloi, Gaonburha of Barukata Gaon, 3 No. Lat. Mouza Monaha on behalf of Smti Aditi Deori, Smti Padma Deori, Smti Renu Deori.

4. At the time of hearing of the said petitions, which took place on 06.11.2010, learned Counsel for the present Defendants-Petitioners submitted that at the time of filing of the written statement and at the time of filing of the documents, Defendants were not in possession of some documents, which had been submitted in Title Execution No. 01/2009, and, hence, they may be granted leave to submit those documents in terms of Order XIII Rule 1 of the Code of Civil Procedure. The submissions, so made, were resisted, on behalf of the Plaintiffs by their learned Counsel, who submitted that the Petitioners (i.e., the Defendants), nowhere, stated, at the time of filing of documents and settlement of issues, that some documents, which they would rely upon, were not in their custody and due to this reason, they could not produce those documents in the Court nor did they inform the Court as to who the person was in whose custody the documents were lying and why they could not file such a petition earlier, as they did on 03.04.2010, and, hence, at the stage of recording of evidence of the Defendants' witnesses if documents were allowed to be filed, it would cause injustice to the Plaintiffs. The Plaintiffs accordingly sought for rejection of the prayer of the Defendant-Petitioners.

5. By order, dated 20.04.2010, learned Munsif No. 1, Morigaon, has rejected the Defendant-Petitioners' said petitions on the ground that the suit is slated for Defendants' evidence and the Plaintiffs would suffer irreparable loss if, at such a

belated stage, those documents were allowed to be filed, which, in terms of Order VIII Rule 1A, had not been filed with the written statement or at the stage of filing of the documents or at the stage of framing of issues and, hence, the Defendants cannot be allowed to introduce a new document, when they had not, at the beginning of the trial, sought for leave to file the documents at a subsequent stage.

6. Aggrieved by their rejection of the petition seeking to file documents, the Defendants-Petitioners have impugned the same in this revision.

7. I have heard Mr. Z. Alam, learned Counsel, for the Defendant-Petitioners, and Mr. MH Choudhury, learned Counsel, for the opposite party.

Classification of documents vis-a-vis nature of suits

8. Under Order VI, pleading has been defined to mean plaint or written statement and Sub-rule (1) of Rule 2 of Order VI states that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

9. It is also pertinent to point out that a pleading contains material facts and material facts are those facts, which a party rely upon, must prove, at the trial, in order to get a judgment in his favour. The material facts pleaded can be proved by oral or documentary evidence depending upon the facts pleaded. If any of the material facts in the pleadings is such, which is required to be proved by oral evidence, then, the question of bringing documentary evidence may not arise, for example, the fact that the Defendant had made an attempt to dispossess the Plaintiff. This averment, made in the plaint, need not be substantiated by documentary evidence, though a document may be relied upon to show that such an accusation was made at the time, when the Defendant, according to the pleadings in a given plaint, had attempted to dispossess the Plaintiff. However, if there are facts in a plaint, which the law requires to be substantiated by documentary evidence and not by oral evidence, then, those facts, in order to show that the right to sue exists, must be substantiated by documentary evidence to the exclusion to that extent of the oral evidence, for example, a suit based on promissory note. This is in tune with the provisions of Sections 91 and 92 of the Evidence Act, where under oral evidence is excluded by documentary evidence if certain facts, as indicated in Sections 91 and 92, are required to be proved.

10. It follows that if a fact is to be substantiated by a documentary evidence, then, the document must be filed at the initial stage to show that the claim is not unfounded, for example, when title to a property is claimed by way of purchase, sale deed is a document, which has to be annexed to the plaint to show that the claims, made in the plaint, regarding title, are proposed to be proved by documentary evidence, namely, the sale deed, or else, the claim can be said to without basis inasmuch as oral evidence to prove the title by purchase is

inadmissible, in evidence, in such a case, if the value of the property exceeds rupees one hundred. Thus, the documents are required to be filed at an early stage so that the Court can ascertain the dispute, which it has to decide. The second object of filing of document is to let the other side know about the manner in which a claim is sought to be substantiated by a party. These apart, if a document is annexed to the plaint, the Defendant gets sufficient time and opportunity to examine if the document (annexed to the plaint) is or is not an authentic one so as to enable him (Defendant) to assail production of a false and fabricated document, at a later stage, by the Plaintiff.

Changes introduced by the CPC (Amendment) Act, 2002, as regards filing of documents in both classes of suits, namely, a suit based on document as well as a suit, wherein a document is relied upon.

11. There has been a marked improvement made by the CPC (Amendment) Act, 2002, (hereinafter referred to as "the Code") in the scheme of the Code as regards trial of suits. Order VII Rule 14(1) CPC states as under:

14. Production of document on which Plaintiff sues or relies. - (1) Where a Plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court, when the plaint is presented by him, and shall, at the same time, deliver the document and a copy thereof, to be filed with the plaint."

12. Close on the heels of the provisions of Sub-rule (1) of Rule 14 of Order VII is Sub-rule (2) thereof, which reads as under:

14. Production of document on which Plaintiff sues or relies. -

(1) * * *

* * *

(2) Where any such document is not in the possession or power of the Plaintiff, he shall, where possible, state in whose possession or power it is.

13. While considering the provisions, contained in sub-Rules (1) and (2) of Rule 14 of Order VII, it needs to be borne in mind that a suit, as indicated above, may be based on document(s), or it may be a suit, which, though not based on document(s), is a suit, where a document is relied upon by the Plaintiff to support his plaint. The document, which forms the basis of a Plaintiff's suit, or a document, which a Plaintiff relies upon as a piece of evidence to support his plaint, may or may not in the possession or power of the Plaintiff. It is to be noted, in this regard, that irrespective of the fact whether the document is the one, on which the Plaintiff bases his suit, or it is one, which he relies upon as a piece of evidence to support his plaint, Rule 14(1), in either case, requires the Plaintiff to file, at the very stage of presentation of the plaint, a list, wherein both the classes of documents have to be enlisted with his plaint and deliver not only the documents, but also copies thereof, with the plaint if the Plaintiff is in

possession or power of the documents.

14. The above provisions further show that irrespective of the fact as to whether a document is or is not in the possession or power of the Plaintiff at the time of presentation of the plaint, the Plaintiff has nevertheless the duty to furnish a list of documents, as indicated hereinbefore, and, if he has the document aforementioned in his possession or power, he must produce, at the very stage of presentation of the plaint, not only the document, which he sues upon or relies upon, but also a copy thereof with the plaint.

15. Extended logically, it would mean that it is mandatory that the Plaintiff informs the Court, at the very stage of presentation of the plaint, about the documents upon which his suit is based, or about the documents upon which he relies. It is for this reason that he is required to give not only a list of such documents, but he shall deliver those documents and copies thereof with the plaint at the time of presentation of the plaint. Sub-Rule 14(2) makes it clear that even in a case, wherein a document, which a Plaintiff relies upon, is not in his possession or within his power, he shall, wherever possible, state in whose possession or power the document is. Both the classes of documents - be the documents, the one on which the suit is based, or the one, which is relied upon by the Plaintiff as a piece of evidence to support his plaint - have to be delivered to the Court at the time of presentation of the plaint and a copy thereof has to be filed with the plaint.

Object of filing of documents at the earliest

16. Thus, a combined reading of the provisions of Sub-rule (1) and (2) of Rule 14 sub serves two objects. These rules expedite the process of disposal of the suit inasmuch as it brings on record the documents, which form the basis of the Plaintiff's suit as well as the documents, which the Plaintiff relies upon as a piece of evidence in support of his plaint, provided that the document is in his possession or power. At the same time, the Court as well as the Defendant(s) are informed about the documents, which form the basis of the Plaintiff's suit, or the documents, which the Plaintiff relies upon. Coupled therewith, if the Plaintiff is not in possession of a document, which he sues upon or relies upon, he informs the Court, wherever possible, as to where the document is so that process of the production of the document gets expedited.

17. Another object of requiring the parties to furnish list of documents and also a document, where a document is in the possession or power of the party concerned, is to remove the element of surprise, for, a decision in a suit is taken on the basis of preponderance of evidence. For the purpose of bringing the evidence on record, each of the parties must know each other's case. Thus, the element of surprise has to be removed.

Fall out of documents not being filed on or before settlement of issues and when production of document is not sought.

18. Consequential to the provisions contained in Sub-rule (1) and 2 of Rule 14 of Order VII, Sub-rule (3) thereof reads as under:

(3) A document, which ought to be produced in Court by the Plaintiff, when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

19. Thus, Sub-rule (3) of Rule 14 of Order VII further lays down that it is at the time of presentation of the plaint itself that the Plaintiff must deliver the document on which he sues or the document, which he relies upon to support his case, provided that the document is in his possession or power. When the document is not in his possession or power, he must state in whose possession or power the document is if he knows. If the Plaintiff does not inform the Court, at the time of presentation of the plaint, about the document, which is the basis of his suit or which he relies upon, and if he does not deliver the document, which he ought to have produced at the time of presentation of the plaint, or if not in his possession or power, does not tell the Court, even though he knows, where the document is lying, then, he is debarred from producing such a document for the purpose of recording evidence.

What documents need not be filed in the suit?

20. The only exception to the requirements of Sub-rule (3) of Rule 14 of Order VIII as well as Sub-rule (3) of Rule 1A of Order VIII is given under Sub-rule (4) of Rule 14 of Order VII and Sub-rule (4) of Rule 1A of Order VIII, which lay down, in effect, that nothing contained in these Rules shall apply to a document produced for the purpose of cross-examination of a Plaintiff's witnesses by the Defendant or produced or handed over to a witness by either side merely to refresh a witness's memory.

21. In other words, a document, which is produced by the Defendant merely for the purpose of cross-examination of the Plaintiff's witnesses or a document, which is produced by the Plaintiff for the purpose of cross-examination of the Defendant's witnesses, or a document, which is handed over to a witness by either party merely to refresh the witness's memory is not a document, which is required to be filed at the time of presentation of the plaint or at the time of filing of written statement, as the case may be.

22. By the CPC (Amendment) Act, 1999, which came into effect on 01.07.2002, Rule 1A has been added to Order VIII, which reads:

"1-A. Duty of Defendant to produce documents upon which relief is claimed or relied upon by him -(1) Where the Defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court, when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be

filed with the written statement.

23. A careful reading of Rule 1A of Order VIII puts it beyond the veil of doubt that same as in the case of Plaintiff, the Defendant's case may be based on a document or the Defendant may be relying on a document in support of his case. In either case, the Defendant is obliged to, at the time of presentation of his written statement, not only to give a list of such documents, but also to produce the documents in the Court and deliver copies thereof. Similar as in the case of a plaintiff, Sub-rule (3) of Rule 1A requires that a document, which had to be produced, in the Court, by the Defendant at the time of filing his written statement, but is not so produced, shall not, without leave of the Court, be received in evidence on behalf of the Defendant at the time of hearing of the suit. Thus, Sub-rule (3) of Rule 1A of Order VIII bars the Defendant too, same as the Plaintiff, from producing any document, which he ought to have produced at the time of filing of the written statement.

Distinction between the pre-amended and amended Code in matters of filing of documents

24. Before the CPC underwent amendment by the CPC (Amendment) Act, 1999, and 2002, there existed, as regards filing of documents, two distinct schemes depending upon the nature of the documents, namely, (i) a document, which forms the basis of a Plaintiff's suit, and (ii) a document, which the Plaintiff relies upon as a piece of evidence to support his plaint. Basing on these two distinctly different classes of documents, there were two distinct classes of suits, namely, (i) suits based on documents, for example, a suit based on promissory note and (ii) suits, where documents were filed as evidence of the facts stated in the plaint, for example, a suit for title, where sale deed is an evidence of title. In respect of suits based on documents, the Plaintiff was required to produce the original at the time of presentation of the plaint; but for the purpose of record, he was required to file the copy thereof only at the stage of presentation of plaint, but in respect of those documents, which the Plaintiff might have relied upon as a piece of evidence, the Plaintiff was required to enter the documents in a list and the list was required to be annexed to the plaint. As per Rule 18, if the provisions of Rule 14 were not complied with, the Plaintiff was precluded from filing any document in the suit at a later stage.

25. So far as the object of filing of documents at an early stage of a suit is concerned, there has been no substantial change. But, after the 2002 Amendment, two circumstances have been merged into one and in both classes of suits, the Plaintiff is, now, required to produce the documents, in original, at the time of presentation of the plaint, though he must, if he has not filed the document, in original, at the time of presentation of the plaint, produce the document on or before settlement of issues. The obligation to file documents depending upon the nature of the suit, as is required under the pre-amended Code, has been dispensed with in the amended Code. After the amendment, classification of the suits has been kept intact, but in both classes of the suits, a

Plaintiff is required to produce the documents at the time of presentation of the plaint.

26. Similarly, a Defendant is also required to, now, file document if his claim rests on a document and also those documents, which he relies upon for the purpose of supporting his case. Order VIII Rule 1A is a new addition to the Code, because under the pre-amended Code, there was no obligation cast on the Defendant to file documents or a list of documents along with written statement. With the amendment introduced by the CPC (Amendment) 2002, every Defendant has been brought, in this regard, at par with the Plaintiff and the Defendant too is, now, required to produce all the documents, in original, on which his defence rests, as indicated above in the case of the Plaintiff.

27. I may pause here to point out that a minute conjoint reading of Sub-rule (1) of Rule 14 of Order VII and Sub-rule (1) of Rule 1 of Order XIII shows that under Order VII Rule 14(1), at the time of presentation of the plaint, the Plaintiff shall, apart from submitting the list, wherein he must enter the document, which he sues upon or relies upon, deliver "the document" and "a copy thereof". The expression, "the document", obviously means the document based on which the suit is instituted or the document, which the Plaintiff relies upon to support his claim, and the expression, "a copy thereof", would naturally mean a copy of the document, which the Plaintiff sues upon or relies upon. Thus, apart from submitting the "list", as aforesaid, and a copy of the "document", which the Plaintiff sues upon or relies upon, he must deliver to the Court "the document" itself, which would mean, "the document", in original, or else, the question of delivering "the document" and "a copy thereof" would not arise.

28. Thus, at the time of presentation of the plaint, the document, which a Plaintiff sues upon or relies upon, has to be delivered, in original, along with a copy thereof, to the Court. Similar provisions have been made in respect of the Defendant under Rule 1A(1) of Order VIII.

29. In the backdrop of what has been pointed out above, when, however, the provisions contained in Order XIII Rule 1(1) are carefully scrutinized, it transpires that the provisions, embodied in Order XIII Rule 1(1), require the parties, or their pleader, to produce, "on or before the settlement of the issues", all the documentary evidence, in original, where the copies thereof had been filed along with the plaint or written statement. This shows that on or before the settlement of the issues, the party, who bases his claim or defence on a document or relies upon a document, must, in every case, produce, in the Court, the document, in original, if the same is in his possession or power.

30. There is an apparent dichotomy between Sub-rule (1) of Rule 14 of Order VII and Sub-rule (1) of Rule 1A of Order VIII, on the one hand, and Order XIII Rule 1(1), on the other, the dichotomy being that while Order VII Rule 14(1) as well as Order VIII Rule 1A(1) require the party concerned to produce the "documents", in original, along with copies thereof, at the time of presentation of

their pleadings, Order XIII Rule 1(1) permits production of the "original documents" on or before the settlement of the issues. This, in turn, shows that even if, for some reason, at the time of presentation of his pleadings, the Plaintiff or the Defendant, as the case may be, has not been able to produce the documents, in original, on which his claim rests or, on which he, otherwise, relies upon to support his claim, he must produce the documents, in original, at least, at the time of settlement of the issues if the same is in his possession or power.

31. One has to bear in mind that it is with the settlement of the issues that the hearing of a suit commences and the Code, therefore, seeks to ensure that if not at the time of presentation of the pleadings by a party, all the documents, in original, which may be in the possession or power of the party, who bases his claims or defence on such document(s), be produced by him, on record, in every case, at the first hearing of the suit.

32. Logically, therefore, once written statement has been filed, the stages from Order X to XII of the Code come into play. For ascertainment of the real dispute between the parties, parties are allowed to inspect the documents of the other side and to scrutinize the veracity of the documents and also take the plea of forgery, etc, if necessary.

33. Order XIII, now, requires that all the original documents, which have been relied on, along with the pleadings, be produced in the Court before settlement of the issues and that the Court shall receive the document so produced if documents are accompanied by an accurate list thereof prepared in such form as the High Court directs. Of course, the documents, which are produced for cross-examination of witnesses of the other party, or a document, which is handed over to a witness merely to refresh his memory, does not come within Order XIII Rule 1. There has been change in Order XIII in the sense that the pre-amended Code permitted additional documents to be filed under Order XIII. This has been dispensed with and the scheme today is that unless there be an application for inspection of the documents relied on by the other side, the party is not required to produce the original before the stage of production of the documents. The scheme, which has, now, been introduced is that a party must set out, at the beginning, not only the nature of the claim or defence, but also the class of evidence, namely, oral or documentary, by which such claim or defence is sought to be proved. Once the pleadings and documents are filed in the Court, the Court is better equipped to minimize the area of dispute, which would be adjudicated upon by recording evidence. If the pleadings as well as the existence of the documents are admitted, then, even a party, which relies upon such a document, the original whereof is not in his possession or power, need not call for the original. This enables the Court to proceed with the trial of the suit by framing issues and, at the same time, bringing it to the notice of the parties as to which issue is required to be proved by whom.

34. Before amendment, Order VII Rule 14(1) and (2) read as follows:

14. Production of document on which Plaintiff sues. --

(1) Where a Plaintiff sues upon a document in his "possession or power", he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) List of other documents. -- Where he relies on any other documents (whether in his "possession or power" or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

35. After amendment, Order VII Rule 14(1) and (2) read as follows:

14. Production of document on which Plaintiff sues or relies

(1) Where a Plaintiff sues upon a document or relies upon document in his "possession or power" in support of his claim, he shall enter such document in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the "possession or power" of the Plaintiff, he shall, wherever possible, state in whose "possession or power" it is.

(3) A document which ought to be produced in Court by the Plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the Plaintiffs witnesses, or, handed over to a witness merely to refresh his memory.

36. Before amendment, the documents "sued on" were covered by Sub-rule (1) and the Plaintiff was required to produce the document, "sued on", in the Court at the time of presenting the plaint. The Plaintiff was further required to deliver the document "sued on" at the time of presentation of the plaint or a copy thereof was required to be filed with the plaint at the time of presentation of plaint.

37. The provisions of Sub-rule (2) contemplated those documents, which the Plaintiff "relied on" (whether in his "possession or power" or not) as evidence in support of his claim and for these documents, the Plaintiff was required to enter such documents in a list to be added to, or file with, the plaint.

38. If we read Order 7 Rule 18 prior to its amendment, it will be apparent that the penalty was provided for two circumstances: Firstly, when the document, which ought to be produced in Court, had not been produced. The term "ought to be produced" would mean a document, which was within the dominion or control of the Plaintiff, but had not been produced. Secondly, when the document was one, which was required to be entered in a list at the time of presenting the

plaint, but had not been so entered.

39. Thus, it would be evident that irrespective of the fact whether the document was in "possession or power" of the Plaintiff or not, he had, as indicated above, the obligation to meet the requirements of Rule 14 (1) and (2) and, on his failure to do so, he would have invited the penal consequences of Rule 18.

40. After the amendment, the sub rules (1) and (2) have been merged into one rule that is sub rule (1). A new sub rule (2) has been added, which requires the Plaintiff to furnish a statement of documents, which are not in his "possession or power". The penal provisions of Rule 18, prior to amendment, has, now, been inserted as it is in the form of sub rule (3). So far as the obligation to produce documents, in "possession or power", and to file a list of other documents, whether in "possession or power" or not, is concerned, there has been no departure from the previous position and it remains the same in the present rule too. The distinction is only with respect to the documents. In the previous rule, the Plaintiff was obliged to produce only the document "sued on" and in respect of other documents; he was required to file a list of the documents with the plaint. After the amendment, be it the document "sued on" or the document "relied on", the Plaintiff, in either case, is required to produce not only the document "sued on" but also the document "relied on" provided that the document "sued on" or "relied upon", as the case may be, is in his "possession or power". This apart, he is also under an obligation to file the list of documents "sued on" and "relied on" irrespective of the fact whether the document is in his "possession or power" or not.

41. The earlier Sub-rule (2) took care of the documents irrespective of the fact whether those were in the Plaintiff's "possession or power" or not. The new Sub-rule (2) is a segregated portion of earlier Sub-rule (2) and, now, the documents, which the Plaintiff does not have in his "possession or power", are required to be stated. The term "wherever possible" refers to a situation, when the Plaintiff knows that the document is not in his "possession or power" but does know where the document is lying. Thus, if he knows where the document is lying, he is under an obligation to make a statement to the effect as to where the document is lying. The words "any such document" appearing in sub rule (2) obviously refer to the documents "sued on" or "relied on" as envisaged in Sub-rule (1) and the requirement of Sub-rule (1) is to enter the documents in a list and not only produce the documents in the Court, but also deliver the same to the Court with copies thereof filed with the plaint. Naturally, the documents, which are not in the "possession or power" of the Plaintiff, cannot be expected to be produced by the Plaintiff; hence, a statement, as indicated in Sub-rule (2), must be made to that effect.

42. If we read the penal provisions embodied in Sub-rule (3) only with reference to sub rule (1), it may not convey the proper meaning of entire Rule 14. The penalty is provided not only for non-production of documents but also for non-disclosure of documents in the list, which is required to be filed with the plaint;

otherwise, a Plaintiff may deliberately omit to produce a vital document along with the plaint and produce it, later on, with the plea that it was not in his "possession or power". If he seeks to file a document belatedly, he owes a duty to the Court to explain why the document was not entered into the list as aforementioned.

43. The term "possession or power" inheres the knowledge of the existence of the documents. Order VII Rule 14(1) and (2) contemplates not only those documents, which the Plaintiff has in his "possession or power" but also those documents, which are within his knowledge, though the document may not be in his "possession or power". The question of leave arises not only for documents in "possession or power", but also for those documents, which, within the knowledge of the Plaintiff, were lying elsewhere. The expression "possession or power" implies actual and physical "possession or power". What, therefore, is, in the "possession or power" of the Plaintiff has to be understood from the perspective of Order 11 Rule 12. Thus, if a party applies for an order of discovery or of inspection of certain documents, from the other party, the prayer can be allowed only when the document is in "possession or power" of the other party; otherwise, the party may not comply with the order for production of document, it being not in his possession or power.

44. A party may rely on various documents, some of which may be in his "possession or power" and some of which may not be in his "possession or power". The sub-rules (1) and (2) take care of the both the situations. Necessarily, therefore, if any document is not in the "possession or power" of a Plaintiff at the time of presenting the plaint, no obligation to file those documents at the time of presentation of the plaint would arise; but if there are other relevant documents, which are not in the "possession or power" of the Plaintiff, the same would not take away the Plaintiff's obligation to make a statement to the effect as Sub-rule (2) requires, namely, that the Plaintiff makes a statement indicating thereby the fact as to whether the Plaintiff knows in whose "possession or power" the document is and if he knows, he must disclose in whose "possession or power", the document is. However, for the both the sets of documents, whether in the "possession or power" of the Plaintiff as well as documents, which may not be in the "possession or power" of the Plaintiff, but he knows where the documents are, he has the obligation to file a list containing all those documents, which he "sues upon" or "relies upon", and he also has the obligation to inform the Court in whose "possession or power" a document is, provided he has the knowledge as to the identity of the person in whose "possession or power" the document is, so that the production of the document can be caused at the earliest.

45. Thus, at the very stage of presentation of plaint, the Plaintiff must produce before the Court all such documents, which the Plaintiff "sues on" or "relies upon" if the documents or part of such documents are in the Plaintiff's "possession or power" and in respect of both these classes of documents, the

Court must be given the information, if the Plaintiff knows as to who the person is in whose "possession or power", the documents are. If the Plaintiff has the knowledge or the information as to where any of the said two classes of documents is or who is in "possession or power" thereof, but he does not discharge this obligation by making a clear disclosure of necessary facts to the Court, he will invite the penal consequences of Sub-rule 3 and those documents may not be received in evidence.

46. The penalty under sub rule (3) has been provided, therefore, for both the situations as contemplated under sub rule (1) as well as sub rule (2), because sub rule (3) specifically provides that the documents will not be received in evidence, without leave, when the documents have not been produced or entered in the list. The word production refers to those documents, which are in "possession or power" of the Plaintiff, but the penalty is also provided for not entering a document in the list of documents "relied upon", even though, the document may not be in the "possession or power" of the Plaintiff.

47. The principles, discussed above, apply with equal vigour to the Defendant as well.

48. Order VIII Rule 1A provides as follows:

1A. Duty of Defendant to produce documents upon which relief is claimed or relied upon by him

(1) Where the Defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in possession or power of the Defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the Defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the Plaintiff's witnesses, or (b) handed over to a witness merely to refresh his memory

49. The provisions of Rule 1A has been inserted by the 2002 Amendment and it applies to documents on which the defence is based on as well as the documents relied on. Thus, if the Defendant has pleaded a set off, to the claim of the Plaintiff, on the strength of a promissory note executed by the Plaintiff, the Defendant is said to have based his defence, to the claim of the Plaintiff, on the promissory note and he, therefore, is required to produce the promissory note

along with his written statement if the promissory note is in his "possession or power". The Defendant is also required to produce all those documents, which are in his "possession and power", at the time of presentation of the written statement. As in the case of the Plaintiff, an additional duty is also cast on the Defendant to enter all the documents, be it a document on which the "defence is based" and/or the documents "relied on" by him, in a list to be filed with the written statement, irrespective of the fact whether the documents are in his "possession or power" or "not".

50. Thus, if a document is lying in the custody of another case record, the party cannot be said to have the possession or power of the document; but he must mention in the list to be filed with the plaint/written statement, as the case may be, and he must also disclose to the Court-provided he knows-as to where the document is or who has the document in his possession or power. If he omits to do so, he can introduce the document only with the leave of the Court and not otherwise.

51. When the question of leave arises, the Court has to see that the purpose of producing the documents at the pretrial stage is not defeated. The leave has to be, therefore, granted bearing in mind the three conditions precedents, namely, (i) The Petitioner must disclose whether the document, sought to be introduced, was in his "possession or power" or not at the time of presentation of the plaint; (ii) In either case, whether the document was in his "possession or power" or not, the reasons, why the documents was not produced along with the plaint, or reasons why the document was not entered in the list, as the case may be; and (iii) And why it was not disclosed, at the time of the presentation of the plaint as to where the document and how he has come to know in whose "possession or power" the document is or was.

52. The reasons for granting leave may vary from case to case; hence, no formula can be laid down on the principles on which the leave is to be granted. The granting of leave would depend on the given set of facts and circumstances in a case. Consequences of not filing of documents, where pleadings are presented without any list of documents as well as fall out of documents not being filed on or before settlement of issues and when production of document is not sought.

53. The fallout of the above discussion is that if a Plaintiff or Defendant does not, while presenting the plaint or the written statement, as the case may be, produce the documents, on which he sues or bases his claim, as well as the documents, which he relies upon as a piece of evidence to support his case in the plaint or written statement, as the case may be, he debars himself from producing such a document at the time of settlement of the issues or call for production of such a document. The provisions, contained as regards settlement of issues, leave no room for doubt that at any rate, before settlement of issues, all the documents, in original, where originals had not been delivered at the time of presentation of the plaint or the written statement, must be placed before the

Court. It is with the settlement of the issues that the hearing of a suit commences.

54. It is, in this regard, necessary to take note of the fact that before issues are framed, the documents must come on record and it becomes the duty of the Court to ensure that in terms of the requirement of Order XII, notice is given by a party to the other side for admission of the documents, if any. In fact, Order XII Rule 3A empowers the Court to record admission at any stage of the proceeding on its own motion and, on such admission, even a judgment can be given in terms of Order XII Rule 6. When inspection of documents and records, if any, is over, documents are brought on record and after documents, if any, are admitted, the stage for framing of issues arrives. Naturally, therefore, the issues must indicate as to who is the party on whom the burden of proof lies and it is in accordance with the burden of proof that the evidence has to be recorded.

55. Any time after the issues are framed, if any of the parties to the suit, the Plaintiff or the Defendant, seeks to produce any document as evidence, he must disclose to the Court as to how the document is relevant, why the document could not be produced earlier, why the document was not given in the list of documents, while presenting a plaint or written statement, as the case may be, and why leave of the Court was not obtained for producing the document or calling for production of document at a later stage of the suit. If a document is not included in the list, which is required to be presented along with the pleadings, namely, plaint or the written statement, the Court may not allow, particularly, when it is satisfied that introduction of such a document is irrelevant or would delay the trial or cause any prejudice. It is, however, not enough for a party, or even a Court, to merely say that prejudice would be caused if the document is not allowed to be introduced. A party, who seeks introduction of a document at a belated stage, must satisfy the Court that introduction of the document would, if not allowed, cause prejudice and it was for reasons beyond his control or power that the document could not be produced earlier nor could the document be included in the list of documents, which was required to be filed at the time of presentation of the plaint or written statement, as the case may be. Similarly, the party, who contends that it would cause prejudice to him if the document is allowed to be filed, has the obligation to show as to how his case would be prejudiced.

56. Merely contending by either of them that prejudice would be caused would not be enough unless they can demonstrate the same by assigning reasons therefore. Even when a Court allows a document to be introduced at a belated stage on the ground that not allowing the document to be produced would cause prejudice, the Court must assign reasons therefore and, similarly, if a Court refuses to allow introduction of a document, at a belated stage, it must assign reason as to why it has come to such a conclusion that the documents shall not be allowed to be filed or called for. What is, however, of immense importance to bear in mind is that merely because prejudice may not be caused, a document

cannot be allowed to be introduced unless the party, seeking introduction of the document at a belated stage, satisfies the Court that it has exceptional and special reasons for its inability to file the document, which, though ought to have been filed, could not be filed at an earlier stage.

57. Procedural law is, no doubt, handmaid of justice. This does not, however, mean that procedural law is not to be followed. It would, therefore, depend on the party, who seeks production of a document, if issues have already been framed, to show as to why such a document be allowed to be produced, though the same was not in the list of the documents, which the party had filed at the time of presentation of his pleadings.

58. I have already indicated above that one of the objects of requiring the parties to furnish list of documents and also a document, where a document is in the possession or power of the party concerned, is to remove the element of surprise, for, a decision in a suit is taken on the basis of preponderance of evidence and, for the purpose of bringing the evidence on record, each of the parties must know each other's case. Thus, the element of surprise has to be removed.

59. In the case at hand, the Petitioners filed a petition merely saying that there are certain documents, which are required to be produced. This was followed by another petition, wherein they gave a list of documents. While so submitting a list of documents, the Defendants did not state as to why these documents are relevant. Thus, except saying that the documents, if not allowed to be produced, would prejudice the Defendants' case, nothing was stated, in the petition, to show as to how prejudice would be caused to the Defendants if the documents, in question, were not allowed to be produced. The Defendants, in the present case, also failed to show as to why they had not included, in the list of documents to be filed by them, the documents, which they have, subsequently, sought to produce.

60. I have already pointed out above that one of the important objects of requiring the parties to furnish a list of documents and also a document, where the document is in the possession or power of the party concerned, is to remove the element of surprise, for, the parties would proceed on the basis of the pleadings and also on the basis of the impression, which one party creates in the mind of the other party as regards the documents, which a party would rely upon in order to prove the material facts pleaded by such a party.

61. The Defendants, in the present case, had not filed any list of document specifying as to what documents they were relying upon. It is worth pointing out that the Defendants neither submitted copies of the documents, which they are, now, seeking to rely upon, nor did they submit any list enlisting therein the documents, which they are, now, seeking to produce. The suit was, thus, allowed to be proceeded without the Defendants having disclosed to the Plaintiffs that the Defendants would rely upon any document to prove the material facts pleaded by

them in their written statement, though they knew, all along, where the documents were lying. Having made, thus, the Plaintiffs proceed under the impression, which the Defendants had themselves created, that the Defendants would not prove any document in support of their case, the Defendants, on the closure of the Plaintiffs' suit, filed a petition seeking to produce certain documents. Even in this petition, neither the Defendants mentioned the documents, which they would like to produce nor did they state as to why they had not filed, by way of a list of documents, the documents, which they were, now, seeking to produce. The Defendants merely stated in their petition that the documents, which they were seeking to produce, stood filed in an execution proceeding. When did the execution proceeding start, the Defendants are silent. Why the Defendants could not inform the Court, at the initial stage, that the documents, which they would like to produce in the suit, were lying in an execution proceeding, the Defendants have offered no explanation, far less plausible explanation. By their subsequent petition, the Defendants have, however, mentioned the documents, which they wanted to produce and even in their latter petition, they have not disclosed as to why they had not filed any list, while submitting written statement mentioning therein the documents, which they are, now, seeking to produce nor have indicated in their petition as to why they did not state, though they were required to state, at the time of presentation of the plaint, as to when the documents were lying, particularly, when they knew where the documents were lying.

62. Thus, the chain of circumstances, as indicated above, does not leave any doubt that the Defendants did not act with promptitude and seriousness, which the scheme, under the Code of Civil Procedure, envisages. In the complete absence of any explanation having been offered by the Defendants, and in the absence of any explanation discernible from the materials on record, as to why the Defendants had not filed a list of documents enlisting therein any of the documents, which they are, now, seeking to rely upon, this Court is of the view that in the circumstances aforementioned, the learned trial Court's decision not to allow the Defendants to produce the documents is wholly justified and in accord with law.

63. Coupled with the above, the learned Court below is not incorrect in observing that if, at a belated stage, the documents are allowed to be produced, it would cause prejudice to the Plaintiffs inasmuch as the Plaintiffs have already closed their evidence.

64. In the result and for the foregoing reasons, this revision is dismissed with cost and the impugned order is maintained.

65. With the above observations and directions, this revision shall stand disposed of.