

(1979) 01 OHC CK 0010

In the Orissa High Court

Case No : Civil Revision No. 531 of 1978

Rajkishore Prasad and Others

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 23-01-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12

Citation : AIR 1979 Ori 96 : (1979) 47 CLT 451

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : P.C. Misra and S.P. Misra, for the Appellant; D.P. Mohapatra, B. Rath and Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

N.K. Das, J.—Plaintiffs are petitioners against an order rejecting their petition filed under Order 11, Rule 12 of the Civil P. C. Plaintiffs filed a suit for permanent injunction restraining the defendants from interfering with their possession and not to come over their land or change the status quo thereof. The dispute relates to a portion of a plot belonging to the Jagannath Road Fund Trust. It is contended by the plaintiffs in the plaint that their father was a lessee in respect of the property in question and had erected a house thereon. After expiry of the lease period, at the instance of the Jagannath Road Fund, demand was made for depositing money for renewal of the lease and money was accordingly deposited. Though the formal lease deed has not yet been executed, the plaintiffs have been in possession of the land with the present structures standing thereon. During the period of Emergency, all of a sudden some officers of the State Government and of the Municipality along with a police force came with heavy machineries on 30-6-1975 and without any prior notice they demolished the permanent construction standing on the land of the plaintiffs in spite of protest and the occupants were threatened to be detained under the Maintenance of Internal Security Act and the Defence of India Rules. It has been averred in para

10 of the plaint that similar other constructions in the locality were also pulled down by bulldozers and other heavy machineries creating a panic in the minds of the public, in particular the inhabitants of the locality, so much so that none ventured to seek redress against such demolition. The demolition work was carried on rapidly and promptly and there was hardly any time for the public to seek redress against demolition. After demolition was complete in the locality, several writ applications were filed in the High Court challenging the action of the authorities. Plaintiff No. 1 also filed O. J. C. No. 1528 of 1975 in the High Court apprehending further demolition and order of injunction was issued" by the High Court restraining the authorities from carrying on further demolition or interfering with the peaceful possession of the plaintiffs. In the counter-affidavits to the writ application, a false plea was taken that the demolition was made under the provisions of the Orissa Prevention of Land Encroachment Act, but as a matter of fact no proceeding was started against the plaintiffs and in fact records were manufactured, fabricated and forged to cover-up the high-handed actions. It is alleged that all the manipulations and fabrications of papers were done for such demolition. The plaintiffs are in possession of the property in question and there is further threatening for their dispossession and, as such, the present suit has been filed. A sketch-map has been appended to the plaint to show the residential area of the plaintiffs and the land for which the suit has been filed. In para 14 of the written statement of the State Government, it has been averred that Encroachment case under the Orissa Prevention of Land Encroachment Act was filed against the plaintiffs and personal contact and proclamation through loudspeaker were made before actual eviction, proceedings were started against the plaintiffs and orders we're passed in accordance with law with the knowledge of the plaintiffs. In para 15, it is only stated that the allegations in paras 9, 10 and 11 of the plaint are not admitted and the plaintiffs are put to strict proof of the same.

A petition for ad interim injunction was filed by the plaintiffs and the pre-sent matter arises out of that injunction matter which has been registered as Misc. Case No. 28 of 1978.

2. In that proceeding, it appears from Order No. 17 dated 28-4-78 of the court below that the plaintiffs wanted to cross-examine the persons who have sworn affidavits on behalf of opposite parties Nos. 5 and 6. Counsel for opposite party No. 6 agreed to file the documents in his possession on which the affidavits are based. The trial court rejected the petition of the plaintiffs for cross-examination of the deponents, but passed orders that in the interest of justice and for a just decision of the case, the parties should produce all the documents on which they rely. The case was posted to 1-5-78 and the parties were directed to file documents on which they relied for the case. On 1-5-78, a petition was filed by the plaintiffs to the effect that opposite party No. 5 submitted at the time of argument on 28-4-78 that it has no document in its possession. Opposite party No. 6 agreed to file documents. It is further contended by the petitioners that the allegations by the opposite parties that the plaintiffs have been dispossessed and

possession has been delivered by the Jagannath Road Fund to the Greater Cuttack Improvement Trust on 14-10-77, are false and if any document of such delivery is there, such document has been manipulated and created. The provisions of the Orissa Prevention of Land Encroachment Act are not applicable to the case and it is necessary that opposite parties 1 to 3 should be directed to produce all the records of the alleged proceeding taken under the Orissa Prevention of Land, Encroachment Act in respect of the disputed land as well as other lands of the Jagannath Road Fund situated in the locality on which structures were demolished on the same day. The prayer in the petition was that the opposite parties be directed to produce all the records of the alleged proceeding taken under the Orissa Prevention of Land Encroachment Act in respect of the disputed land as well as other lands of the Jagannath Road Fund situated in the locality, demolition of structures over which was, done on the same day from order No. 19 dated 3-5-78 of the court below, it appears that the Government Pleader submitted that the documents were filed in High Court in the writ petition and he would file the same on the following day. Accordingly, the case was adjourned to the following day and it was ordered by the court that if the documents would not be filed, then necessary inference would be drawn according to law and the Misc. Case would be disposed of on merits. On 4-5-78, the plaintiffs filed Hazira of witnesses and wanted to examine them, but the court rejected the prayer and ordered that enquiry of this petition being of a summary nature, there was no question of examination of witnesses and parties were directed to file affidavits in support of their case. Affidavits were accordingly filed by the respective parties. On 17-8-78, a petition was filed by the plaintiffs that on 4-5-78 the Government Pleader produced certain documents without indicating as to which of the opposite party was producing the same. It has been urged in the plaint that not only the house of the plaintiffs but also that of twenty-five others were demolished on the same day in that locality and papers have been manufactured for showing Land Encroachment Cases and service of notices on all persons whose houses have been demolished on that very day. The prayer in the petition was to direct the opposite parties to make discovery of particulars, i. e. number of the cases started under the Orissa Prevention of Land Encroachment Act in respect of the Jagannath Road Fund lands situated in mouza Badajobra on which demolition of structures was effected on 20-6-75; records relating to service of notices; dates of hearing and dates of final orders etc. This petition was rejected by the trial court on the ground that the enquiry was of a summary nature as the question for determination was whether the petitioners have got a prima facie case or otherwise and the scope of enquiry being limited, there was no question to see how many cases under the Land Encroachment Act were instituted by Government against the people of the said locality and what orders were passed in those cases and, as such, the discovery sought for was not in conformity with the question for determination in the case. It was further held that discovery of the aforesaid documents was not necessary for a fair disposal of the petition. As against this order, the present revision has been filed.

3. It is contended by the learned counsel for the petitioners that it has been consistently averred by the petitioners that on one day several houses were demolished by heavy machineries, as a result of high-handed action of the authorities, who are opposite parties, and in the writ petition it was contended that Land Encroachment cases have been filed and in pursuance of the orders in those cases, demolitions were made to evict the occupants. In one petition, as has been stated above, the petitioners have asserted that twentyfive other houses were also demolished on that day in the locality, standing on the Jagannath Road Fund lands. It is asserted by the petitioners that if there is any such document of Land Encroachment cases, then the same has been manufactured. The learned counsel for the opposite parties contends that the records of the Land Encroachment cases relating to the petitioners have been produced in Court and the records in respect of other structures are not relevant for the purpose of the suit and, as such, those are not necessary for production.

4. Order 11, Rule 12 of the Civil P. C. provides :

"Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery, on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs."

While interpreting the above provision, in *Shri M.L. Sethi Vs. Shri R.P. Kapur*, , it has been held that the provisions of Order 11, Rule 12, C. P. C. mean that it is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence, yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trail of enquiry which may have either of these two consequences. It has also been held that generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite

party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents? The aforesaid principle has been elaborately discussed in *Compagnie Financiere Et Commerciale Du Pacifique v. Peruvian Guano Company* (1882) 11 QBD 55. In that case, it has been observed that "a document relating to any matter in question in action" means that in order to determine whether certain documents are within that description, it is necessary to consider what are the questions in the action. The Court must look not only at the statement of claim of the plaintiff's case, but also at the statement of the defence and the defendant's case. In *Attorney-General v. Gaskill*, (1882) 20 Ch D 519, Cotton, L. J. observed :

"The right to discovery remains the same, that is to say, a party has a right to interrogate with a view to obtaining an admission from his opponent of every thing which is material and relevant to the issue raised on the pleadings. It was said in argument that it is not discovery where the plaintiff himself already knows the fact. But that is a mere play on the word "discovery". Discovery is not limited to giving the plaintiff a knowledge of that which he does not know, but includes the getting an admission of anything which he is to prove on any issue which is raised between him and the defendant. To show that the pleadings have raised issues and that therefore interrogatories should not be allowed is another fallacy. The object of the pleadings is to ascertain what issues are. The object of the interrogatories is not to learn what the issues are but to see whether the party intelligently can obtain an admission from his opponent which makes the burden of proof easier than it otherwise would have been."

5. It is contended by the counsel for the opposite parties that the Supreme Court case relates to an enquiry as to pauperism and, as such, the documents sought for would throw light on the question of pauperism, and also in the case reported in the Queen's Bench Division, the question of correspondence relating to a contract which was impugned was concerned and so they were relevant to the fact to be considered and, therefore, it is submitted by the learned counsel that those decisions are not applicable to the present case. As I have already stated above, the definite case of the plaintiffs is that several, houses standing on the Jagannath Road Fund lands were forcibly demolished on one day by the opposite parties taking advantage of the proclamation of Emergency and the plaintiffs' house was one of those houses. The plea taken by the opposite parties is that the demolition were made according to proceedings under the provisions of the Orissa Prevention of Land Encroachment Act. From the order sheet of the court below, it appears that the Govt. Pleader had undertaken to file the documents relating to the structures standing on the Jagannath Road Fund lands as prayed for by the petitioners. But, in fact, only the records relating to the petitioners' case were filed. From the prayer in the petition dated 1-5-78 and the order dated 3-5-78, it is clear that the Government Pleader had undertaken to produce all the documents relating to demolition of structures standing on the land. But this was not done. As such, the plaintiffs were compelled to file a petition for discovery of the documents. It is contended by the learned counsel for the opposite parties

that how can those documents relating to other structures prove the case of the plaintiffs, or possession of the plaintiffs, and how those are relevant for the case of the plaintiffs? It would be seen that the plaintiffs' stand from the very start of filing of the plaint is that not only the house of the plaintiffs, but also other structures standing on that land were forcibly demolished and documents have been manufactured about proceedings under the Orissa Prevention of Land Encroachment Act and the plaintiffs have been consistently pressing the matter. It is contended by the learned counsel for the plaintiffs that those documents will throw light on the fact that records were manufactured for a bunch of cases, including that of the plaintiffs under the Orissa Prevention of Land Encroachment Act and there was no service of notice in fact and all the service returns have been manufactured. Relevancy is not the question for consideration at this stage. Those documents will throw light on the matter in controversy and in favour of the plaintiffs or may contain information which will directly or indirectly enable the plaintiffs to advance their case or damage the stand of the opposite parties. This will result in avoiding a trail of enquiry in the matter for consideration.

6. According to the dictum of the Supreme Court as stated above, the documents may be admissible or may not be admissible in evidence, but if the documents can throw some light to show that the stand of the plaintiffs from the very beginning that the documents have been created and manufactured and false reports have been made relating to Encroachment cases and the demolition of houses was done on the same day in the locality and the case of the plaintiffs is one of them, undoubtedly the documents will throw some light on the matter in controversy. The State Government in its written statement has only stated that it does not admit the allegations and puts the plaintiffs to strict proof of the same. The plaintiffs in their petition prayed for production of the documents and the Government Pleader had undertaken production of those documents. In view of these circumstances, it would be fair on the part of the opposite parties, who are public authorities, to place all the documents before the court and if the documents would have been placed before the court, there would not have been dragging of the case so long. It is not a case of fishing enquiry by the plaintiffs. The plaintiffs have made definite assertions. The court has not allowed to cross-examine the witnesses and directed to file affidavits. In pursuance of the order of the Court, affidavits have been filed. The plaintiffs only prayed for production of the documents and the Court had allowed it on the undertaking of the Government Pleader. But all the documents were not filed as undertaken. In view of these circumstances, it cannot be said that discovery of the documents asked for will not throw light on the assertion made by the plaintiffs.

7. The opposite parties have relied on the case of Gopinath Das v. Harihar Das (1972) 1 CWR 175, which was a case under Order 11, Rule 14 of the Civil P. C. In that case, there was already an inventory of the documents and the Court observed that the plaintiffs should on inspection of the inventory be in a position to know what particular items in the inventory are necessary to be brought to Court and to specify those items and if the Court is satisfied that production of

the documents is necessary, the Court would naturally after hearing the parties cause production of only those documents which in his opinion would be necessary and relevant for the purpose of the suit. But the plaintiff had not specified those documents and the counsel for the plaintiff undertook to file an application for specifying the documents. In view of the aforesaid facts, I am of opinion that the decision is not applicable to the present case. Reliance has also been placed by the opposite parties on Lajpat Rai Vs. Tej Bhan and Others, . This case has absolutely no application to the question raised in the instant case. In that case, discovery of documents was asked for which did not have any bearing on the case of the plaintiff. The case had no relationship with partnership of the parties, but the documents sought to be discovered related to the question of partnership and as such the Court held that the plaintiff wished to inspect the account books with a view to fish out, if possible, some possible entries in those books and as such fishing enquiry should not be allowed. As I have already observed above, in the instant case the application is not for a fishing enquiry, but definite and consistent assertions have been made by the plaintiffs relating to demolition of houses and manufacture of records.

8. On the aforesaid analysis, I hold that the petition for discovery of documents made by the plaintiffs should be allowed and the reasonings given by the court below are not tenable and amount to illegal exercise of jurisdiction.

9. In the result, the civil revision is allowed. The impugned order of the trial court is set aside and the petition of the plaintiffs for discovery of documents is allowed.

In the circumstances of the case, there will be no order as to costs.