

(2011) 12 RAJ CK 0071

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12026 of 2011

Renuka Bhati (Smt) and Others

APPELLANT

Vs

Brijraj Singh and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 10, Order 13 Rule 10(2), Order 7 Rule 14, Order 7 Rule 14(4)
Constitution of India, 1950 — Article 226, 227

Citation : (2012) 3 RLW 1968

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Advocate : J.R. Patel, for the Appellant; L.R. Mehta with Ramit Mehta and Mukesh Rajpurohit, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Gopal Krishan Vyas, J.—In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners-defendants No. 1 to 3 have prayed for quashing order dated 19.11.2011 passed by the District Judge, Jaisalmer in Civil Suit No. 157/2009, whereby, the learned District Judge, Jaisalmer allowed the applications filed by the plaintiff-respondent No. 1 dated 19.9.2011 and 12.10.2011 by which, original record of file No. 100/1971 and 197/1971 of the Assistant Settlement Officer, Jaisalmer and file No. 18/10 (93/99) of the S.D.O., Jaisalmer along with file No. 1/70 of the Land Records Officer, Jaisalmer were requisitioned and the plaintiff is permitted to use the documents whose certified copies have been produced for the purpose of cross-examination. As per facts of the case, the respondent-plaintiff filed a suit for perpetual injunction on the ground that he is sole heir and successor of Ex Ruler Maharaja Girdhar Singh and Maharaja Raghunath Singh under the custom governing the succession as the Rule of Primogeniture. In the suit, reply and counter-claim for partition were filed by the petitioner-defendants and after framing issues the plaintiff produced his ocular as well as documentary evidence

and, after closing of the plaintiffs evidence on 20.8.2011, the defendant Devraj Singh produced his affidavit in examination in chief.

2. Learned counsel for the defendant-petitioner submits that before recording statement of defendant Devraj two applications were filed on 19.9.2011 and 12.10.2011 respectively requesting therein for summoning the above-mentioned documents for the purpose of cross-examination. Reply to both the applications were filed and it was specifically pleaded that as per mandatory provisions of Order 7 Rule 14, C.P.C. the plaintiff is required to produce all the documentary evidence which are in his possession and power and, upon which, he sues. Where the plaintiff sues or relies upon the document in his possession or power in support of his claim he shall enter such document in a list and shall produce in the Court along with the plaint presented and, at the same time, shall deliver the document and copy thereof, to be filed with the plaint.

3. Further, as per the amended Civil Procedure Code, if a document which ought to be produced in the Court by the plaintiff when the plaint is presented or entered in the list to be added or annexed to the plaint but is not produced or entered accordingly shall not without leave of Court receive in evidence on his behalf at the time of hearing of the suit. Further, it is submitted that there was complete embargo on the power of the Court that any such document could not be received in evidence on behalf of the plaintiff at a later stage; but, there is only one exception in the amended CPC whereby such document can be received in evidence with leave of the Court which the Court shall grant in genuine cases only.

4. The crux of argument of learned counsel for the petitioner is that mandatory provisions are ignored by the trial Court while deciding the applications filed by the respondent-plaintiff. The rigour of the rule does not apply to documents which are sought to be adduced as a corroborative evidence in support of the claim made in the plaint or for the cross-examination of the plaintiff's witness or handed over to a witness to refresh his memory. In this case, admittedly the plaintiff did not produce nor entered in the list of the document all the requisite documents for which he had applied for summoning, therefore, the finding given by the trial Court while allowing the applications are totally illegal and order impugned deserves to be quashed.

5. Learned counsel appearing on behalf of the petitioners submitted that the finding given by the trial Court in impugned order dated 19.10.2011 is arbitrary and perverse because the trial Court passed the order without considering the pre-conditions enumerated under Order 13 Rule 10(2), C.P.C. Under the said provisions, there are three pre-conditions, viz.-

(1) The application must be supported by an affidavit and must show how the record is materially relevant to the suit in which the application is made.

(2) The applicant must obtain the certified copies without unreasonable delay.

(3) Production of the original is necessary for the purpose of justice. According to learned counsel for the petitioners all these conditions are absent; but, the learned trial Court while ignoring these conditions passed an order in favour of the plaintiff-respondent to summon the said documents which is totally erroneous.

6. In support of his contention, learned counsel for the petitioners invited attention of the Court towards judgments 1956 RLW 92, Gilliram vs. Kedar Nath, 2002(2) CDR 1387 (Raj.) 2010 (1) DNJ (Raj.) 324, Ramswaroop vs. State of Rajasthan & Others; and, while inviting attention towards judgment of this Court reported in 2007(3) DNJ (Raj.) 1685, Depala Ram vs. Jetha Ram & Others, it is submitted by the counsel for the petitioners that no explanation for not summoning the documents up to the plaintiffs evidence and no explanation why the certified copies of the documents were not produced which should have been exhibited in evidence of the plaintiff, therefore, the order impugned has been passed in contravention of Order 13 Rule 10, CPC,

7. Learned counsel for the petitioners submitted that in this case the desired documents cannot be summoned for the purpose of cross-examination of defendant Devraj Singh because the plaintiff wants to produce the documents on record in the garb of cross-examination which is not permissible in law because there is distinction, between production and summoning of the documents. It appears that in the garb of exercise of right u/s 145, Evidence Act (the right to confront the witness), read with sub-rule (2) of Order 7 Rule 14 and of Order 13 Rule 1 of the Civil Procedure Code, the said documents cannot be summoned.

8. Learned counsel for the petitioners submits that sub-rule (3) of of Order 7 Rule 14 of the CPC is not applicable in the present case because phrase "plaintiff's witness" is mentioned by the legislature and not "plaintiff which is mandatory in nature but the learned trial Court has not applied the principle and passed an order to summon the desired documents for cross-examination of the defendant and not for the plaintiffs witnesses, therefore, the trial Court has totally made wrong interpretation of the judgment rendered by this Court in the case of Jetha Ram vs. Shanker Lal & Another, reported in 2000(2) CCC 146 (Raj.) = RLW 1999(3) Raj. 1529, therefore, the order impugned deserves to be quashed.

9. Learned counsel for the petitioners lastly submitted that the trial Court has committed an error to summon the files for cross-examination of the defendant on family settlement. Therefore, the findings are totally perverse because the plaintiffs suit is also based upon so called family settlement which is alleged to be executed by late Chandraveer Singh, father of defendant Devraj Singh. The burden to prove was upon the plaintiff but although the alleged family settlement is not executed by D.W.1 Devraj Singh and all the three cases were decided before 1973 when the defendant was neither born nor the so called family settlement was executed by him. Hence, the trial Court has committed a serious error of law while passing order to summon the desired files for the purpose of

cross-examination of DW.1 Devraj Singh. Therefore, the writ petition may be allowed and order impugned may be quashed which is totally in contravention of mandatory provisions of the Civil Procedure Code.

10. Per contra, learned Senior Advocate Mr. Lekh Raj Mehta, appearing on behalf of the plaintiff-respondent, vehemently argued that the order impugned does not require to be interfered with because interference under Article 227 of the Constitution of India in the interlocutory order is very limited. The District Judge has rightly allowed the two applications filed by the respondent-plaintiff for requisitioning the files from the office of the Assistant Settlement Officer and S.D.O., Jaisalmer for cross-examination of Devraj Singh, defendant No. 3. The District Judge while passing such order made it clear in the order that the plaintiff is permitted to use the documents for the purpose of cross-examination of Devraj Singh; meaning thereby, certified copies have already been filed which is on record. The main objection raised by the petitioners that answering respondent (plaintiff) neither filed the documents along with the plaint nor mentioned the same in the list of documents filed with the plaint; but, this objection is completely misconstrued because according to Order 7 Rule 14 and Order 13 Rule 10 of the CPC it is clear that party to the suit cannot be denied to cross-examine the witness produced on behalf of the other party. More particularly, the cross-examination is not only confined to the fact to which the witness has deposed in examination-in-chief but is also entitled to put questions to the witness in cross-examination which he thinks that the witness will be able to depose and that he has" further right to prove even his case from the opponent's witnesses.

11. Learned counsel appearing on behalf of the respondents further submits that according to provisions of the Indian Evidence Act, the cross-examiner is entitled to get the material on record with respect to the facts in issue though the witnesses may not have referred to that fact in his examination-in-chief and the plaintiff has not referred to such fact or facts or the documents pertaining to such facts and the list of documents filed with the plaint, therefore, this writ petition is totally based upon misconceived grounds.

12. Learned counsel for the respondent submits that in the application itself it is specifically stated that certified copies of documents are filed herewith; meaning thereby, the certified copies of the documents are on record, therefore, the application has been filed to summon the original record and trial Court accepted the same for the purpose of cross-examination of defendant No. 3 Devraj Singh, in which, there is no illegality.

13. As per the counsel for the respondents, in the suit filed by the plaintiff-respondent, counter-claim has also been filed for partition of the property in question, therefore, in the counter-claim he is plaintiff and being defendant in the counter-claim the respondent-plaintiff has every right to summon the record for the purpose of cross-examination and it was not possible to produce those document at the time of filing suit or to mention in the list of documents with

presumption that defendant will file counter-claim in future. The learned District Judge has simply requisitioned the files and documents mentioned in the application, that too, subject to the condition mentioned therein viz., certified copies of the documents in question have been furnished by the plaintiff with the application, therefore, it cannot be said that order passed by the trial Court is in contravention of Order 13 Rule 10, C.P.C. The petitioner-defendant has tried to mislead this Court by raising unfounded plea, therefore, the order impugned does not require any interference.

14. After hearing learned counsel for the parties, I have perused the entire record of the case, so also, provisions of Order 13 Rule 10, C.P.C.

15. As per the pleadings of this petition, two applications were filed by the respondent-plaintiff before the District Judge in the suit for permanent injunction filed by him after recording the evidence of the plaintiff. Both the applications are on record being Annex. 3 dated 19.9.2011 and Annex. 4 dated 12.10.2011.

16. In the above applications, a prayer is made to summon the original files No. 100/71 and 197/71 of the Assistant Settlement Officer, Jaisalmer and further file No. 18/2010 from the office of the S.D.O., Jaisalmer with file No. 17/2010 for the purpose of using the original documents enclosed with them during the cross-examination of defendant Devraj Singh.

17. In the order it is observed that the plaintiff has filed certified copies of the documents. Learned trial Court upon objection raised by the petitioner-defendant that unless copies of these documents are placed on record the documents not listed in the list of documents presented with the plaint under Order 7 of the CPC the original documents cannot be sent for under Order 13 Rule 10(2), C.P.C. the learned trial Court observed in the order that as per Order 7 Rule 14(4), C.P.C. there is exception that nothing in this rule shall apply to documents produced for the cross-examination of the plaintiff's witness or handed over to a witness merely to refresh his memory.

18. It is admitted position that the petitioner-defendants have filed counter-claim and prayed for partition of the property in question, then, obviously the petitioner-defendants are the plaintiffs in the counter-claim and, at the time of producing their oral evidence, the aforesaid exception under of Order 7 Rule 14(4) of the CPC will apply. It is true that Order 13 Rule 1, C.P.C. requires production of the documents at or before the settlement of the issue but this rule creates an exception for those documents which are produced for cross-examination of the other party.

19. It is worthwhile to observe that the objection raised by the petitioner-defendant that documents were not listed in the list of documents presented with the plaint under Order 7 Rule 14, C.P.C. is not acceptable because as per Order 7 Rule 14(4), there is exception under which it is provided that nothing in this rule shall apply to documents produced for the cross-examination of the plaintiffs witness or handed over to the witness merely to refresh his memory. In this

regard, it is the admitted position of the case the counterclaim has been filed by the defendant-petitioners for claiming partition of the property in question, therefore, obviously to prove the counter-claim defendant No. 3 is one of the witnesses and he is required to be treated as plaintiffs witness because of the counter-claim filed by the defendant-petitioners, therefore, in my opinion, the exception provided under Order 7 Rule 14(4), C.P.C. will apply in this case. In this view of the matter, no error has been committed by the trial Court while passing the order for summoning the original files for which certified copies have been placed on record along with the applications.

20. With regard to argument of learned counsel for the defendant-petitioners that the documents are not relevant, in my opinion, there is complete fallacy in the argument advanced by the counsel for the petitioners because in the counter-claim the petitioners have prayed for partition of the property in question and if while filing certified copies of certain documents the application has been filed for summoning original documents, then, objection raised by the petitioners that those documents are not relevant is not sustainable because the petitioner-defendants themselves are claiming partition of the property for which settlement was executed. It might be so that defendant Devraj Singh was not born prior to the said family settlement but for confrontation of the witness with the original record of those documents can be summoned. For the reason that in the counter-claim petitioner-defendants have prayed for partition of the property in question, therefore, the District Judge has rightly pointed out that the documents are relevant because those documents will throw light on the issues at the time of final adjudication of the controversy.

21. In this view of the matter, the trial Court has rightly exercised its jurisdiction and discretion for proper adjudication which cannot be termed illegal or in contravention of any provision of the Code of Civil Procedure. Hence, no case is made out for interference in the order impugned passed by the learned District Judge, Jaisalmer in exercise of jurisdiction under Article 227 of the Constitution of India. As a result of the above discussion, this writ petition fails and the same is hereby dismissed.