

(2013) 11 CAL CK 0066
In the Calcutta High Court
Case No : CR No. 031 of 2013

Shri Narasimham

APPELLANT

Vs

Shri K. Kondaiah

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 CAL CK 0066

Hon'ble Judges : Toufique Uddin, J

Bench : Single Bench

Advocate : Anjili Nag, for the Appellant;K. Vijay Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Toufique Uddin, J.—This is an application under Article 227 of the Constitution of India concerning the impugned order dated 12.04.2013 passed in Other Suit No. 13 of 2008 by the learned Civil Judge (Junior Division-I) at Port Blair rejecting the prayer of the plaintiff for recalling. The short background involved in this revision is that the opposite party/plaintiff filed a suit against the petitioner/defendant for eviction and recovery of possession. The petitioner/defendant filed a written statement specifically contending that he is not the tenant under the opposite party/plaintiff but he is in occupation of the land in question by dint of a sale agreement, entered into by and between the opposite party/plaintiff and the petitioner/defendant. Further he has examined the witnesses and the case was fixed for DWs. The petitioner/defendant filed his examination-in-chief. Cross examination was started and on the second day of cross examination due to two questions asked together the petitioner/defendant was confused and answered in "yes".

2. The evidence was adduced on 3rd April, 2013 and the defendant was not well on the said date as he was suffering from chest pain. On 7th April, 2013, the defendant told his counsel that he could not gather the entire question and he answered only the first part. On the said date the counsel for the opposite party/

plaintiff asked the following question:

Did you issue legal notice to the plaintiff and the plaintiff went to his counsel and showed the legal notice and only thereafter, the plaintiff came to know that the agreement entered between you and the plaintiff was a sale agreement and not a tenancy agreement.

3. The defendant has answered "yes" as he could gather only the first part of the question. The learned Court below recorded the answer as follows:

it is fact that Kondaiah came to know that about the sale of suit plot after the legal notice was read over and explain to him by his Ld. Advocate.

4. The specific case of the defendant/petitioner is that Kondaiah had full knowledge about the sale agreement and its contents. Due to misunderstanding of the questions put forth to him the petitioner/defendant answered in the manner above. On recall by the application the defendant wants to answer the following question.

Why did you say that it is fact that Kondaiah came to know that about the sell suit plot after the legal notice was read over and explain to him by his Ld. Advocate.

5. By filing an application under Order 18 Rule 17 of Code of Civil Procedure, the petitioner/defendant wanted to provide explanation for answering the question as mentioned in paragraph 6 of the application. The plaintiff filed objection to the application on 12.04.2013.

6. On hearing of both sides, the court below rejected the application on 12.04.2013. Hence this revision.

7. Learned lawyer of the petitioner contended that the learned court below failed to consider that the entire case of the petitioner was that the opposite party plaintiff has full knowledge about the contents of the agreement while it was executed.

8. Learned court below ought to have split up the questions before the same was answered by the petitioner/defendant to explain the reasons for answering the question in "Yes". Learned lawyer of the petitioner contended that the petitioner was 70 years old ailing man and by putting compound question, the opposite party wanted to extract favourable answer from the mouth of the witness and accordingly, the witness failed to understand the purport of the compound question and answered only to the first part of the question by stating "Yes".

8. The learned lawyer of the petitioner also contended that the opposite party/plaintiff filed a written objection and stated in paragraph 7 that the statement made in paragraph 6 of the said application are matters on record. So, according to her, the plaintiff did not deny the extent of compound question.

9. On the other hand, the learned lawyer of the opposite party/plaintiff submitted

that he did not put complex question as alleged. He drew my attention to the copy of the evidence of DW-1 taken on 3.4.2013 wherein DW-I stated, "It is fact that Kundaiah came to know about the sell of suit plot after the legal notice was read over and explained to him by his Id. Advocate". The learned lawyer contended that he put solitary question and not a compound question and the DW-1 has answered correctly the question. So there is no scope to make any further clarification by recalling the witness only to fill up lacunae.

10. In support of his contention, learned lawyer of the plaintiff placed before me a decision as reported in Vadiraj Naggapa Vernekar (D) Through Lrs. Vs. Sharad Chand Prabhakar Gogate, wherein the Hon'ble Apex Court while dealing with the questions under Order 18 Rule 17 of CPC held as follows:

Where the witness whose chief examination and cross examination is already sought to be recalled only for the purpose of filling of some gaps which came out after the cross-examination, it cannot be allowed and the court's order rejecting the same is confirmed.

11. I have considered the submissions made by the learned lawyers of both sides.

12. The Order 18 Rule 17 of the CPC reads as under:

Or. XVIII - R.17. Court may recall and examine witness -The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

12. It is correct that the art of cross examination is a device to extract the truth. But it is equally accepted that such art cannot be twisted to befool the witness by throwing a compound question. The petitioner contends that the said question was a compound one whereas the learned lawyer of the respondent contended that the question was simple. Admittedly there is nothing in the evidence in the form of questionnaire.

13. The case of the plaintiff is that the plaintiff is the owner of the suit property where the defendant was inducted as tenant by the plaintiff on monthly rental of Rs. 1000/- payable according to English calendar under the plaintiff and the defendant became defaulter in payment of monthly rents. Despite requests, the defendant did not pay rent to the plaintiff. The defendant also made construction unauthorisedly in the suit land.

14. The case of the defendant is that he was never inducted as a tenant under the plaintiff. The defendant is a purchaser of the suit land from the plaintiff at a consideration of Rs. 1,20,000/-. Further case of the defendant is that on 20.09.1995, the plaintiff and the defendant entered into an agreement whereby the plaintiff agreed to sell half portion of the land measuring 85 sq.mtrs with a single storied wooden house consisting of three rooms standing on the said land out of land bearing survey No. 34/42/3 measuring an area 170 Sq.mtrs together situated at South Point village, Port Blair Tehsil, South Andaman and the plaintiff

also received a total consideration of Rs. 1,20,000/- from the defendant.

15. After getting the said piece of land, the defendant fenced his area measuring 85 sq.mtrs and repaired the said house which was completed in the year 1998. The defendant developed the suit land by constructing house, toilet, septic tank and one more room in the suit land. The defendant also obtained electricity and water tap connection for which he got no objection from the plaintiff. If the plaintiff is landlord, then he would have objected for the construction and development carried out by the defendant. But he did not do so because the defendant also paid property tax and conservancy fees to the authorities concerned.

16. Now let it be examined what would be the impact of the question over which the parties are at logger heads in this revision.

17. According to the defendant the impact is as follows:

18. The alleged question raised by the petitioner is a compound one. The answer given by the plaintiff was "yes". So the first part of the question "did you issue legal notice issued to the plaintiff" has got the answer "yes". Now the dispute is regarding answer "yes" in regard to the next part of the question namely, "the plaintiff went to his counsel and showed the legal notice and only thereafter the plaintiff came to know that the agreement entered between you and the plaintiff was a sale agreement and not a tenancy agreement".

19. The question and the answer may very well be connected with the legal notice, issued to the plaintiff. That is a matter of record. Further the date of execution of the agreement is also a matter of record. So, if for argument's sake, I accept that the question was compound and the defendant gave reply of the question in the affirmative in respect of all parts of question, yet, he has nothing to do at this stage because the plaintiff is to prove the case by way of oral or documentary evidence. It is not seen if the execution of any agreement entered by and between the plaintiff and the defendant has been denied or not. So, it is thought that the outcome of recalling the witness to explain the answer elaborately or to deny the part of question makes no difference. The case shall be based on documents including notice and agreement. There is no necessity to make clarification of answer through recall of witness.

20. This being the position, I find no merit in this revisional application. Accordingly, the revisional application stands dismissed. No order as to costs.