

(2019) 03 RAJ CK 0055
In the Rajasthan High Court
Case No : Civil Writ No. 2711 Of 2019

Shri Sachiyay Mataji Trust

APPELLANT

Vs

Laxman Singh And Ors

RESPONDENT

Date of Decision : 05-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Order 11 Rule 12, Order 11 Rule 14

Citation : (2019) 03 RAJ CK 0055

Hon'ble Judges : Dinesh Mehta, J

Bench : Single Bench

Advocate : Arpit Bhoot, PM Vyas

Final Decision : Disposed Off

Judgement

1. The present writ petition is directed against the order dated 13.2.2019, passed by the learned Addl. District Judge, Jodhpur District, Jodhpur (hereinafter referred to as the trial Court), whereby the application dated 5.1.2019, filed by the plaintiff - respondent no.1 herein has been allowed in toto.

2. Facts, narrated in a nut-shell, are that the plaintiff - respondent no.1 filed a suit for injunction and for quashment of five resolutions of the defendant - trust, mentioned in prayer clause No.1 of the plaint. The prayer clause No.1 reads thus:

"1. प्रतिवादी द्वारा पारित प्रस्ताव/निर्णय दिनांक 09.09.07 (नौ सितम्बर दो हजार सात), 23.09.07 (तेईस सितम्बर दो हजार सात), 03.02.08 (तीन फरवरी दो हजार आठ), 24.08.08 (चौबीस अगस्त दो हजार आठ) एवं 22.02.09 (बाईस फरवरी दो हजार नौ) को निरस्त करमाया जावें।"

3. Though the plaintiff had filed copies of the above mentioned resolutions alongwith the suit, but since their originals were required for the purpose of leading evidence, he moved application dated 5.1.2010, under Order XI Rule 12 and 14 of the Code of Civil Procedure with the following prayer:

"अतः प्रार्थना पत्र प्रस्तुत कर निवेदन है कि जरिये उचित आदेश प्रार्थी का यह प्रार्थना पत्र स्वीकार करमाया जावे एवं प्रतिवादीगण को आदेश दिया जावे कि प्रार्थना पत्र के पद संख्या 2 में वर्णित मुल दस्तावेज (श्री सच्चियाय माता जी ट्रस्ट

ओसियां का संविधान, साधारण सभा की विशेष बैठक दि. 10.06.2007 का प्रस्ताव, ट्रस्ट मण्डल की बैठक दि. 09.09.2007 को प्रस्ताव, दि. 23.03.2007 के सदस्य बनाने के लिए गठित की गई समिति का प्रस्ताव, ट्रस्ट मण्डल की बैठक में दि. 03.02.2008, 24.08.2008, 22.02.2009 को पारित किये गये प्रस्ताव एवं ट्रस्ट कार्यालय द्वारा दिनांक 01.03.2009 को जारी की गई सूचना) न्यायालय के समक्ष पेश करे एवं साथ ही प्रतिवादीगण को यह भी निर्देश दिये जावे कि दिनांक 22.02.2009 पश्चात आहूत की गई बैठकों में लिये गये निर्णयों एवं प्रस्तावों के सभी मूल दस्तावेज माननीय न्यायालय के समक्ष पेश करें।"

4. The defendant - petitioner herein opposed the said application contending that as the plaintiff had already filed its affidavit in evidence, the said application cannot be granted. It is however to be noted that there was no denial of the fact that the resolutions was in its possession.

5. The trial Court allowed the plaintiff's application dated 5.1.2010, inter alia observing that the defendants have not refused possession of these documents. The operative portion of the order reads as under:

"यह प्रकरण इस न्यायालय के 10 वर्ष से अधिक पुराने प्रकरणों में से एक है। वादी ने अपने प्रार्थना-पत्र में साक्ष्य के दौरान मूल दस्तावेज की आवश्यकता होना बताया है। मूल दस्तावेज प्रतिवादी पक्ष के आधिपत्य में न हो, इस तथ्य से इन्कार नहीं किया गया है। वादी का प्रार्थना-पत्र न्यायोचित आधार पर पेश किया जाना पाया जाता है। अतः वादी का प्रार्थना-पत्र स्वीकार किये जाने योग्य है।

परिणामस्वरूप: वादी की ओर से दिनांक 05/01/2010 को आदेश 11 नियम 12 व 14 सपठित धारा 151 जाब्ता दीवानी के अन्तर्गत प्रस्तुत प्रार्थना-पत्र स्वीकार किया जाकर प्रतिवादी पक्ष को आदेश दिया जाता है कि वे प्रार्थना-पत्र में अंकित मूल दस्तावेज वादी की साक्ष्य के दौरान पेश करें।"

6. Mr. Bhoot, learned counsel for the petitioner, calling the order dated 13.2.2019 in question, argued that the order impugned passed by the trial Court is non-speaking and the same deserves to be set aside on this count alone. He argued that proviso to Rule 12 of Order XI of the CPC in unequivocal terms require the Court to record a finding that the documents sought to be summoned are necessary in disposing the suit fairly and for saving the cost.

7. Learned counsel for the petitioner further argued that the plaintiff had sought not only the copies of the resolutions dated 9.9.2007, 23.9.2007, 3.2.2008, 24.8.2008 and 22.2.2009, but has also sought the copies of the minutes of the other meetings of the trust which were held even after 22.2.2009. He argued that neither in the application nor in the order passed by the trial Court, any justification for the requirement of the copies of the minutes of the meeting held after 22.2.2009 has been given.

8. Learned counsel for the petitioner submitted that as far as the resolutions/ minutes of the meeting, which are under challenge are concerned, the petitioner trust may have no serious objection, but in relation to the other minutes, they feel aggrieved. As production of those minutes is unwarranted on the one hand and it would affect the secrecy of the business of the trust. He also submitted that they are not at all relevant for the purpose of deciding the controversy in question.

9. Mr. Vyas, learned counsel for the respondent submitted that so far as relevance of the documents, particularly, the resolutions of the trust are concerned, the plaintiff has sought quashment of various resolutions of the trust, vide its prayer clause (1), (3) and (7) and hence, the requirement of these resolutions cannot be doubted. In relation to the resolutions of the trust after 22.2.2009, he fairly submitted that plaintiff would not insist upon production of the minutes of the meeting after 22.2.2009.

10. Having heard learned counsel for the parties and upon perusal of the record, this Court finds that impugned order passed by the trial Court does not contain any reason or justification worth the name. Hence, this Court is of the considered view that the learned Court below has erred in allowing the plaintiff's application dated 5.1.2010 in toto. It was required of the Court below to have recorded a finding about the requirement of the documents mentioned in the application.

11. Be that as it may, instead of remanding the matter for de novo consideration, I have heard learned counsels on the application itself.

12. As far as the resolutions, quashment whereof has been sought are concerned, it cannot be gainsaid that they are necessary for the disposal of the suit. In absence of original resolutions or duly authenticated copies thereof, evidence cannot be led. However, no case has been set up for summoning other resolutions mentioned in the subject application. The impugned order dated 12.02.2019 directing the petitioner to produce all the resolutions mentioned in the application (except five resolutions mentioned in prayer clause No.1 of the plaint) is per se erroneous.

13. It is the duty/responsibility of the petitioner - trust to place on record the resolutions, quashment whereof, has been sought. The order impugned to the extent of summoning such resolutions cannot be faulted with.

14. In the light of the aforesaid discussion, the writ petition is allowed in part. The order of the court below dated 13.02.2019 to the extent it allows plaintiff's application qua the resolutions dated 9.9.2007, 23.9.2007, 3.2.2008, 24.8.2008 and 22.2.2009 is affirmed.

15. The order of the Court below allowing the application with respect to the minutes/resolutions dated 10.6.2007 and the minutes of meeting held after 22.2.2009 is set aside. The plaintiff's application qua remaining resolutions stands rejected.

16. With the consent of the parties, it is deemed expedient and hence ordered that the petitioner - trust shall produce photostat copies of the above-referred resolutions mentioned in para no.14 above duly authenticated by the Secretary of the Trust and the trial Court shall record evidence with respect of these documents. Mr. Bhoot learned counsel for the petitioner has fairly agreed that as far as the admissibility of such resolutions (duly authenticated photostat copies of the resolution) is concerned, the petitioner will not raise any objection.

Writ petition partly allowed, as indicated above.

The stay application No.2623/2019 is also disposed of accordingly.