
(1998) 09 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Revision Petition No. 269/98

Sidhkaran

APPELLANT

Vs

Smt. Manjulata

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 2, Order 16 Rule 6

Citation : AIR 1999 Raj 40 : (1999) 1 CivCC 703 : (1999) 3 RCR(Civil) 146 : (1998) 3 RLW 1801 : (1998) 3 WLC 764

Hon'ble Judges : V.S. Kokje, Acting C.J.

Bench : Single Bench

Advocate : R.R. Chacha, for the Appellant; L.R. Calla and G.R. Calla, for the Respondent

Final Decision : Allowed

Judgement

V.S. Kokje, A.C.J.

1. An interesting question arises in this case and that is whether a party who has failed in bringing a particular document on record through an application under Order 13 Rule 2 CPC cannot bring the same evidence on record by calling a witness under Order 16 Rule 6 CPC to produce the original document. A certified copy of daily diary said to be filled in by the plaintiff in the Office of the Divisional Forest Officer was sought to be produced along with an application under Order 13 Rule 2 CPC by the plaintiff. This application was rejected. Thereupon the plaintiff called for the original diary through a witness from the Divisional Forest Officer's Office. This was not done surreptitiously but by moving an application during the pendency of the plaintiffs own statement. The Court allowed the application, deferred the statement of the plaintiff and allowed the witnesses to be summoned for production of document. The witnesses produced the original diary and it seems a copy of that diary was kept on record which was the same document which was tried to be put on record through an application under Order 13 rule,2 CPC. After the evidence of the plaintiff and his witness was over.

an application was moved by the defendant praying that the documents marked Ex. 4 and Ex. 5 exhibited in the plaintiffs examination-in-chief should not be read in evidence as the same document was refused to be taken on record by the court earlier rejecting an application under Order 13 Rule 2 CPC. The trial court allowed this prayer and by the impugned order directed that the documents Ex. 4 and Ex. 5 exhibited during the examination-in-chief of the plaintiff be struck off and they shall not be read in evidence. This revision petition challenges this order.

2. A bare perusal of Order 13 Rule 2 CPC and Order 16 Rule 6 CPC shows that they deal with entirely different situations. Order 7 Rule 14 CPC provides for production of documents relied on in the plaint. Sub-rule (2) of rule 14 of Order 7 provides that when the plaintiff relies on any other documents other than the documents on which the suit is based as evidence in support of his claim whether the documents are in his possession or power or not he has to enter such document in a list to be added and annexed to the plaint. Order 13 Rule I CPC provides that the parties shall produce at or before the settlement of issues all the documentary evidence of every description in their possession or power on which they intend to rely. Rule 2 of Order 13 provides that no documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of Rule I shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the court for non-production thereof. It is clear from these provisions that they relate to the documents which are in possession and power of the parties.

3. Order 16 Rule 6 on the other hand provides for summoning of a witness for producing a document in his possession. Thus, order 13 deals with documents in possession or power of a party whereas Order 16 Rule 6 deals with documents which are in possession of third party who may be called as witnesses.

4. In the present case, a certified copy of original which was with the Forest Department was attempted to be brought on record through an application under Order 13 Rule 2 CPC. Rejection of that application only means that the certified copy of the original was not acceptable to the court at that late stage. It cannot mean that while deciding that application, the trial court also decided that the plaintiff would not be entitled to get the original document produced through a witness in whose possession the original was. The rejection of application under Order 13 Rule 2 CPC would, therefore, not come in the way of the plaintiff to call the original of the document and get it produced through a witness.

5. Moreover, the objection could have been raised at the time when the permission to summon the witnesses along with the documents was sought and then when the document was being exhibited in the court. When the defendant did not take these opportunities to stall the efforts of the plaintiffs to put the documents on record, he was not entitled to move an interim application for rejection of a part of the evidence which was already there on record legally. The rejection of a part of recorded evidence by the court at an interim stage of the

suit is not known to the CPC or the Evidence Act. These things have to be decided at the time of final decision of the suit if the occasion so demands. The application praying for such a relief itself was not maintainable to my mind.

6. For the aforesaid reasons, the impugned order cannot be sustained. It is clearly a material irregularity in exercise of jurisdiction. This revision petition is allowed, the impugned order is set aside, the parties to bear their own costs.