

SUPREME COURT OF INDIA

Ashok Sharma

Vs.

Ram Adhar Sharma

C.A.No.883 of 2009

(Tarun Chatterjee and V.S.Sirpurkar)

11.02.2009

JUDGMENT

Tarun Chatterjee, J.

1. Leave granted.

2. In the year 1995, the respondent Shri Ram Adhar Sharma let out his flat bearing No.11-C, Una Enclave, Mayur Vihar, Phase-I, Delhi-110091 (hereinafter referred to as the `suit premises') to the appellant at a rental of Rs.3000/- per month, inclusive of electricity bill and maintenance charges of the UNA Cooperative Society (in short `the Society').

3. Now a suit has been filed by the respondent in the Court of the District Judge, Delhi for a decree for possession and also for a decree of Rs.1,01,880/- with interest accrued thereon and for other reliefs.

4. On or about 27th of November, 2004, issues were framed by the trial Court and both the parties were directed to file list of witnesses/documents within 15 days from the aforesaid date. The parties went to trial and the respondent brought Sh.Pawan Kumar Vasudeva, the President of the UNA Cooperative Group Housing Society, within which the suit premises is located, who deposed as PW-3 and made the following statement in his examination :-

“I am the President of UNA Cooperative Group Housing Society. I have seen the document already exhibit as Ex.PW/1/3.I identify my signature on this document. I have produced the documents, the construction of society.”

5. After closure of examination and cross-examination, the trial court closed his examination, but the witness Pawan Kumar Vasudeva-PW-3 sought permission of the court to file certain documents which was not allowed by the trial court on the ground that a witness could not be allowed to produce documents under Order XVI Rule 1 of the *Code of Civil Procedure* (in short `the Code') as the term "production", as mentioned in Order XVI Rule 1 of the Code shall mean that the witness can be summoned to bring the record to prove

the documents placed on record by the parties to the suit and since the document in question was not produced by the respondent either along with the plaint or at the time of framing of issues, such document at that stage could not be taken on record.

6. Feeling aggrieved by the aforesaid refusal to accept the document, as noted hereinabove, the respondent filed a revisional application before the High Court of Delhi and by the impugned order, the High Court had allowed production of the document and directed that the said document be taken on record. Before the High Court, a plea for rejection of the aforesaid prayer of the respondent was raised that a witness under Order XVI Rule 1 read with Rule 1-A of the Code cannot produce documents as it envisages that a witness can either adduce evidence or produce document in Court. As noted herein earlier, the High Court allowed the said document to be taken on record by allowing the revision setting aside the order of the trial Court.

7. Feeling aggrieved and dissatisfied with the order of the High Court, the appellant filed a Special Leave Petition, which on grant of leave, was heard in presence of the learned counsel for the parties.

8. We have heard learned counsel for the parties and examined the provisions under Order XVI Rule 1 read with Rule 1-A of the Code, under which the document was directed to be produced and taken on record by the High Court by reversing the order of the trial Court refusing to take the document on record.

9. The trial Court, as noted herein earlier, refused the prayer for production of the document on a simple interpretation of the word "production" as used in Order XVI Rule 1 of the Code which, according to the trial Court, would mean that the witness can be summoned to bring the record to prove the documents placed on record by the parties to the suit, but in the present case, the said document was not produced by the respondent either along with the plaint or at the time of framing of issues and, therefore, no document can be taken on record at that stage.

10. In our view, the High Court was justified in permitting the document to be taken on record at the instance of the witness PW-3. It is not in dispute that the copies of the same cannot be placed on record by the respondent and they can only be produced on record by summoning the witness, who has the power and possession of the said documents. It is an admitted position as well that since the respondent is simply a member of the society, question of being in possession of the record showing the completion of the construction of the suit premises could not be with the plaintiff/respondent whereas the said document must be with the society, whose President came forward to give evidence and to produce the documents.

11. Order XVI of the Code deals with summoning and attendance of witnesses. The Court under Order XVI Rule 1, on or before the date, may appoint but not later than 15 days after the issues are settled, the parties shall present in Court a list of witness whom they propose to call either to give evidence or to produce documents and obtain summons to such

persons for their attendance in Court. Order XVI Rule 1-A, however, gives a right to a party to a suit to produce witness without summons. Order XVI Rule 1-A of the Code runs as under:-

“Rule 1A : Production of witnesses without summons - Subject to the provisions of sub-rule (3) of Rule 1, any party to the suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.”

12. A plain reading of this provision would clearly show that Rule 1-A of Order XVI of the Code has been substituted by the Legislature to empower a party to bring any witness without obtaining summons subject to the permission of the Court, even if the name of the witness is not in the list to be presented within 15 days of settlement of issues. After issues were framed, the respondent in order to prove the date of completion of construction of the Society in which the suit premises is located, summoned Sh. Pawan Kumar Vasudeva, the President of the Society, (PW-3) to bring the record of completion of construction of the suit premises which is located in the said area of the Society. The trial court had allowed the summoning of the President of the Society for the purpose of showing the time of the completion of construction of the suit premises. PW-3 identified his signature on Ext.PW-1/3 which was the certificate issued by the said society to the respondent. Thereafter, the said witness produced the documents of completion of construction of the society which were summoned by the respondent, but the trial court by the order dated 2nd of May, 2006 rejected the application and did not allow the witness to place the documents brought by him on record on the ground mentioned herein earlier.

13. As noted herein earlier, the High Court has reversed the order of the trial court and allowed production of the document produced by PW-3. In our view, there is no ground for which we can hold that the order of the High Court was not properly passed. As noted herein earlier, Order XVI Rule 1 and 1-A of the Code, if read together, would clearly indicate that it is open to a party to summon a witness to the Court or even may, without applying for summons, bring a witness to give evidence or to produce documents. Since Rule 1A is subject to the provisions of sub-Rule 3 of Rule 1, all that can be contended is that before proceeding to examine any witness, who might have been brought by a party for the purpose, the leave of the Court may be necessary. This by itself would not mean that Rule 1-A was in derogation to sub-Rule 3 of Rule 1. Such document brought by the said witness can be taken on record and it is not necessary that the plaintiff must have filed on record the copies of the said document earlier. Be it mentioned herein, the question of filing a copy of the said document by the plaintiff could not also arise in view of the fact that the document was or cannot be in possession of the plaintiff-respondent. Since the plaintiff-respondent was simply a member of the Society, therefore, the record of completion of the construction of the suit premises can only be proved by the plaintiff/respondent by production of documents which was only in possession with the Society. While considering the scope of Order XVI, Rule 1 and Rule 1A of the Code, this Court in *Mange Ram Vs. Brij Mohan & Ors.*¹ held that the Court cannot decline to examine the witnesses produced by the plaintiff nor the court could refuse to take the documents on record through the witnesses. In para 11 of the said decision, this Court observed as follows:-

“But if on the date fixed for recording the evidence in an election petition, the party is able to keep his witnesses present despite the fact that the names of the witnesses are not shown in the list filed under sub-rule (1) of Rule 1, the party would be entitled to examine these witnesses and to produce documents through the witnesses who are called to produce documents under Rule 1A.”

(Emphasis Supplied)

14. Again in *Vidhyadhar Vs. Manikrao & Anr*². this Court following the decision of *Mange Ram vs. Brij Mohan & Ors.* [supra] has also held that Order XVI, Rule 1 and Rule 1A of the Code permits the court to pass the order directing the witnesses to take the documents on record. Only, while dealing with the application for production of documents under Order XVI Rule 1 read with Rule 1-A of the Code, what is required was that, leave of the court would be necessary. In this view of the matter and applying the principles laid down in the aforesaid two decisions of this Court, we are not inclined to interfere with the impugned order of the High Court by which the High Court had allowed the documents to be taken on record to prove the date of completion of the construction of the suit premises within the area of the Society. At the risk of repetition, it must be stated that the date of construction of the suit premises, which is located within the area of the Society, cannot be proved except by the production of the document of the society which could only be produced by the Society.

14. For the reasons aforesaid, there is no merit in this appeal. The appeal is thus dismissed. There will be no order as to costs.

¹*AIR 1983 SC 925*

²*1999 (3) SCC 573*