

RAJASTHAN HIGH COURT

Santveer Singh

Vs.

Addl. Civil Judge, Hanumangarh

Civil Special Appeal (Writ) No. 15 of 2004
(Anil Dev Singh, C.J. and K.K. Acharya, J.)

14.05.2004

JUDGEMENT

K.K. Acharya, J.

1. This Special Appeal is directed against the order dated 10- 12- 2003 passed by the learned single Judge. The learned single Judge has dismissed the writ petition with liberty to the petitioner to assail the correctness, legality, or propriety of the impugned order, if necessity so arises, by raising appropriate ground in appeal, and in the event of any such ground is raised, that objection will be decided by the court objectively and independently on its own merits.

2. Brief facts as mentioned in the writ petition are as follows:

The plaintiff-respondent No.2 filed a suit against the defendant - petitioner on 28-3-2001 for declaration to the effect that Will dated 24-8-1989 said to have been executed by late Hardayal Singh in favor of the petitioner has been got executed by the defendant petitioner by practicing deception and fraud with the executants and hence is an illegal document which was void and had no effect on the rights of the plaintiff - respondent in relation to the property which was the subject matter of Will and the petitioner gets no legal rights on the basis of the same in relation to the property of late Hardayal Singh. The plaintiff has also claimed the consequential relief of perpetual injunction against the defendant - petitioner to the effect that he be restrained from transferring or in any way alienating the property in question on the basis of the said Will.

3. The appellant - petitioner appeared before the trial Court and submitted his written statement and denied the averments made by the plaintiff in his plaint. The appellant -

petitioner has also raised certain legal objections regarding Court fee and jurisdiction. The trial Court framed issues on 23-11- 2001. Thereafter, the evidence of the plaintiff was recorded and was closed on 6-5-2003.

4. Thereafter, the case was fixed for the evidence of the plaintiff from time to time upto 6-5-2003. After the closure of the evidence of the plaintiff, the case was fixed for the evidence of the defendant on 9-7-2003, but the evidence could not be recorded for one reason or the other on that day. The next date of hearing was fixed for the evidence of the defendant on 6-8-2003 and then on 9-9-2003.

5. The defendant moved an application on 8-9-2003 under Order 8, Rule 1-A (3) Civil Procedure Code with a prayer to allow him to produce certain documents on record which were not in his possession at the time of the filing of the written statement, but were necessary to prove the facts stated in the Will executed by late Hardayal Singh in favor of the petitioner, which were the original sale deeds executed by Wazan Ali in favor of Gurdev Singh, Deep Singh and Man Singh on 16-6-1982, 22-6-1982 and 30-6-1982 respectively for 17 bighas of land. It was also prayed in the said application that out of the 5 sale deeds executed by the members of one family GurnamKaur d/o late Hardayal Singh, Man Singh and Deep Singh all three sons of Smt. SukhpalKaur another daughter of late Hardayal Singh. Two sale deeds had already been filed in Court along with the written statement but the said three sale deeds could not be filed in original at that time though they were entered in the list of reliance. The trial Court vide-the impugned order allowed to take on record the documents mentioned in the application of the defendant dated 9-9-2003 but refused to take on record the documents mentioned in the application dated 8-9-2003 which were the original three sale deeds executed by Wazan Ali in favour of Gurdev Singh S/o Hardayal Singh, Man Singh and Deep Singh, which were not traceable to the defendant at the time of submission of written statement. Since these three documents were the registered sale deeds of the property of Wazan Ali which was purchased by late Hardayal Singh in the name of his son Gurdev Singh and his maternal grand sons namely Deep Singh and Man Singh, which were highly relevant to prove the factum of the land of the said sale deeds standing in the name of aforementioned persons which fact found mentioned in the Will executed by late Hardayal Singh. The defendant had also sought the permission of the Court for allowing him to produce the D. L. C. Rates for the land in question which were necessary to prove the valuation of the land at the time of the filing of the suit by the plaintiff which according to the defendant was highly undervalued by the plaintiff for the purpose of Court fee and jurisdiction. On more

document which was certified copy of the plaint filed by Gurdev Singh son of late Hardayal Singh against the bank in which the relief of injunction was prayed by the plaintiff for not detaining the amount of late Hardayal Singh which was payable to Smt. SukhwinderKaur on the basis of the Will of late Hardayal Singh. The petitioner has further averred that production of such document was relevant for the purpose of showing that the Will of late Hardayal Singh was disclosed by Gurdev Singh as long back as in the year 1989, which was by itself sufficient to prove the factum of genuineness of the Will in question. The defendant also sought permission to take the voter list of the year 1990 on the record.

6. The trial Court after hearing both the parties, disallowed the application of the defendant under Order 8, Rule 1-A(3) Civil Procedure Code relating to documents shown in the list at S. Nos. 7-9 and 11-13 on the ground that the same cannot be allowed to be taken on record on account of failure of the defendant in mentioning the said documents in the written statement as well as in the list of reliance. The trial Court has further held that the defendant has already taken three adjournments for his evidence and as such he cannot be allowed to produce the documents sought to be produced by him at such a late stage.

7. Aggrieved by the said order dated 15- 11- 2003, the defendant - petitioner has filed the writ petition being S. B. Civil Writ Petition No. 6832/2003, in which it was prayed that the order dated 15-11-2003 passed by the learned trial Court dismissing the application of the petitioner under Order 8, Rule 1-A(3)CPC may be quashed and set aside and the documents as mentioned above may be taken on record.

8. After hearing learned counsel for the petitioner, the learned single Judge dismissed the written petition with the observations as mentioned above. Aggrieved by the order dated 10-12-2003 passed by the learned Single Judge, the petitioner has filed this Special Appeal.

9. We have heard learned counsel for the parties and have gone through the record of the case and considered the arguments advanced by the learned counsel for the parties.

10. Learned counsel for the appellant has drawn our attention towards the application filed by the defendant on 8-9-2003 and argued that the documents mentioned in the application were not in the possession of the defendant at the time of the filing of the written statement, but were necessary to prove the facts stated in the Will executed by late Hardayal Singh in favor of the petitioner, which were the original sale deeds executed by Wazan Ali in favor of Gurdev Singh, Deep Singh and Man Singh on 16-

6-1982, 22-6-1982, and 30-6- 1982 respectively for 17 bighas of land. In this application, the defendant has also stated that out of the 5 sale deeds executed by the members of one family in favor of GurnamKaur d/o late Hardayal Singh, Man Singh and Deep Singh sons of Smt. SukhpalKaur, 2 sale deeds had already been filed in Court along with the written statement but the said 3 sale deeds could not be filed in original at that time though they were entered in the list of reliance. The trial Court allowed to take on record the documents mentioned in the application of the defendant dated 9-9-2003 but refused to take the documents mentioned in the application dated 8-9-2003. In the same way, he has further argued that he has also sought permission to allow him to produce the voters list for the year 1980 to show that late Hardayal Singh and his son lived together in village Makkasar. The defendant has also further sought permission of the Court for allowing him to produce the D. L. C. Rates for the land at the time of filing the suit by the plaintiff to prove the valuation of the land. It was also argued before the learned trial Court that he had sought permission to allow him to produce a copy of the plaint dated 3-8-1989 on record. Learned counsel for the appellant further submits that the learned trial Court has wrongly disallowed the application of the defendant on the ground that the same cannot be allowed to be taken on record on account of failure of the defendant in mentioning the documents in the written statement as well as in the list of reliance. The trial Court was of the view that the defendant has already taken three adjournments for his evidence and as such he can not be allowed to produce the documents at such a late stage.

11. Learned counsel for the appellant further argued that the learned trial Court has committed grave jurisdictional error in disallowing the application of the defendant because all these documents were not in possession of the defendant at the time of filing of the written statement. It was also argued by the learned counsel for the appellant that these documents were absolutely beyond suspicion, yet the learned single Judge has dismissed the writ petition without assigning any reason. Since these documents are highly relevant for the just decision of the case, thus prayed that these documents may be taken on record by allowing the Special Appeal.

12. In reply to these arguments, learned counsel for the respondent has brought to our notice that the defendant after taking three adjournments for production of evidence, at the late stage, had filed this application. He has also argued that these documents are not relevant for the decision of the case. The defendant has not shown these documents in his list of reliance. Thus, the learned trial Court has rightly exercised its discretionary powers in rejecting the application of the defendant. He further

submitted that the learned trial Court has given cogent reasons while rejecting the application, therefore, there is no ground to interfere with the impugned order passed by the trial Court as well as the order passed by this Court.

13. The short controversy which has to be decided in this appeal is that whether the trial Court was right or not in disallowing the application dated 8-9-2003 of the defendant filed under Order 8, Rule 1-A(3) Civil Procedure Code for taking the documents on record.

14. Heard learned counsel for the parties and also considered the arguments advanced by them. We have also perused the record and the order passed by the learned single Judge. We have also gone through the relevant legal position.

The Civil Procedure Code amending Act of 1999 substituted Rule 1 of Order 8 and the Amending Act of 2002 further substituted this Rule. Rule 1A stands inserted by the Amending Act of 1999, sub- Rule (3) of Rule 1A has been substituted by the Amending Act of 2002.

15. Amended Order 8, Rule 1A reads as follows:

Duty of defendant to produce documents upon which relief is claimed or relied upon by him:

(1) Where the defendant bases his defense upon a document or relies upon any document in his possession or power, in support of his defense or claim for set-off or counter claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.

"Rule 1A of Order 8 requires the defendant to produce documents upon which relief is claimed or relied upon by him, with the written statement. Sub-rule (3) of Rule 14 of Order 7 directs the plaintiff to file a document which he intends to rely on or is a document entered in the lists of documents, which is not produced at the time of the plaint shall not be received in evidence without the leave of the Court. This amendment is a step in the right direction but the Law Commission was of the view that the plaintiff should not be compelled to file original documents where he apprehends that they may be tampered with while in the custody of the registry of the Court. It should be open to the plaintiff to file the xerox copies of those documents which he apprehends may be tampered with while in the custody of the registry of the Court. But he shall be under an obligation to produce the same at the trial or as and when called upon by the Court.

16. This provision is a time saving step as it directs the plaintiff to file his documents at the time of the presentation of the plaint and in case he fails to do that the same shall not be taken in evidence without the leave of the Court. Before the amendment the documents were only required to be filed before the framing of issues. This has been done away within the present amendment and is likely to save time.

17. Sub-rule (3) of Rule 1A of Order 8 directs the defendant to file a document which he intends to rely on or is a document entered in the lists of documents, which is not produced at the time of the filing of written statement, shall not be received in evidence without the leave of the Court. This amendment is in line with the arguments advanced by the Law Commission that a document which ought to have been produced by the defendant in Court, but is not so produced may be allowed to be produced with the leave of the Court. It means that a document which is missed by the defendant would not be allowed to be produced in the Court without the leave of the Court. This provision is a time saving step as it directs the defendant to file his documents at the time of the presentation of the written statement. In case he fails to do the same, the documents shall not be taken in evidence without the leave of the Court. Before the amendment, documents were only required to be filed before the framing of the issues. This has been done away within the present amendment and is likely to save time. It also mandates leave of the Court to be taken before a document which is not filed with the written statement, is required to be filed in the Court."

(Abstract from Mulla's Commentary on Civil Procedure Code Amendment Act- 16th Edition)

18. Some amendments have also been done in chapter XIII of the Civil Procedure Code. Order 13 rule 1 as amended now reads as follows :

Order 13, Rule 1 - Original documents to be produced at or before the settlement of issues :-

(1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement.

(2) The Court shall receive the documents so produced :

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

19. This amending Act of 1999 has substituted rule 1 of Order 13 for RR 1 and 2. The amending Act of 2002 has not made any changes in this Order. The Amending Act comes in effect from 1st July 2002. It shall not affect the documents produced by the parties or ordered by the Court to be produced before the commencement of amending provisions and every such suit shall be tried as if the amending provision had not come into force.

20. The amendments are in accordance with the provisions contained in amended Order 7, Rule 14 (production of document on which plaintiff sues or relies) and the amended Order 8, Rule 1A (Duty of defendant to produce document upon which relief is claimed or relied upon by him). The amended Rule 1 of Order 13 expressly contemplates situations where the original documents are not filed but only copies thereof are filed with the plaint or written statement. The amended Rule 1 creates an obligation for the parties or their pleaders to produce the original documents before the settlement of the issues.

21. In the present amendment, no discretion is left for the Court to exercise relating to time when original documents are to be filed in a case. It mandates that the original documents must be filed on or before the settlement of issues. This provision again makes it time bound for the parties and the pleaders to produce their original documents within the prescribed time.

22. From perusal of the above legal position, it is clear that Order 8, Rule 1A sub clause 3 falls under the chapter XIII entitled the "Written Statement, Set Off and Counter Claims", which provides that where the defendant bases his defense upon a

document or relies upon any document in his possession or power, in support of his defense or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement. Sub- Clause (2) speaks that where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is. Sub-Clause (3) speaks that a document which ought to be produced in court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

23. After analyzing the above legal position, now we come to the facts of this case. The trial Court has dismissed the application of the defendant filed on 8-9-2003 vide its order dated 15-11-2003. The trial Court has held that the defendant has not relied on these documents in the written statement and also not mentioned these documents in the list of documents and after taking three adjournments for recording of the evidence of the defendant, this application has been filed.

24. In this case, the written statement was filed before the amending provisions of Civil Procedure Code came into force. The written statement was filed on 24-8-2001 whereas the amendment in Civil Procedure Code came into force from 1-7-2002. The defendant had moved the application dated 8-9- 2003 under Order 8, Rule 1-A(3), C.P.C. with the prayer to allow him to produce certain documents on record which were not in his knowledge at the time of the filing of the written statement and some documents were not in his possession and power at the time of the filing of the written statement. The said application was filed at the stage of defendant's evidence. The trial Court had disallowed the application mainly on three grounds. First, these documents have not been mentioned in the list of documents of reliance. Secondly, in the written statement, he has not based his defense or relied upon these documents and lastly, that these documents were produced at belated stage.

25. We are of the view that as far as first two grounds are concerned, the trial Court was misled by the amendment made in the Order 8, Rule 1-A(3), Civil Procedure Code. The written statement was filed on 24-8-2001 much before the amending provisions came into force and the amended provisions of Order 8, Rule 1- A(3) were not applicable at that time. The issues were framed on 23-11-2001 before the amending provisions came into force. Therefore, the trial Court has *per se* committed illegality while holding that the defendant had not relied upon these documents in his

written statement and he has also not mentioned these documents in the list of reliance. The amending provisions which came into force after framing of the issues and at the time when the evidence of the parties were going on, these amendments were introduced from 1st July, 2002, therefore, while relying upon these amended provisions, the trial Court was wrong in dismissing the said application of the defendant since the amending provisions were not applicable at that stage. It is also true that Order 13, Rule 2 was also not applicable when the said application was filed. Therefore, the defendant has moved this application under Order 8, Rule 1(3), Civil Procedure Code since at the time of the filing of the written statement and framing of the issues, the amending provisions were not in force, but when this application was moved on 8-9-2003, the amending Act has come into force. Thus, the defendant has rightly moved the application under Order 8, Rule 1-A(3). The consideration on which the application was rejected by the trial Court was totally on wrong premises. Thus, the trial Court has wrongly interpreted the law and disallowed the application.

26. As far as the third ground is concerned, this application was moved at much belated stage after taking three adjournments by the defendant. We have gone through the averments made in the application. The sale deeds had already been produced by the defendant at the time of filing of the written statement. Then the remaining three sale deeds should also have been taken on record. The defendant has shown good cause for not filing these documents previously. In the same way, the other documents as DLC rates, Voter list of the year 1980 and a copy of the plaint dated 3-8-89 are concerned, DLC rates and Voter list are public document and so far as copy of the plaint is concerned, its genuineness cannot be doubted. These documents could have been taken on record by the trial Court. The suit was filed before the Amending Acts came into force and the written statement was also filed before the Amending Act came into force, therefore the effect of amendment cannot be given to the act already done by the parties. Moreso, it would also be relevant to mention here that the lower Court should have realized this fact that the procedural law is intended to facilitate and not to obstruct course of substantial justice.

From the overall discussions, it is clear that the trial Court has committed *per se* illegality while disallowing the application and has not exercised the discretion judiciously. The plaintiff could have been compensated by awarding appropriate cost on the ground of delay.

Looking to the overall facts and circumstances of the case, the Special Appeal deserves to be allowed and is hereby allowed. The order of the learned single Judge as

well as the order passed by the learned trial Court are set aside. The learned trial Court is directed to take the documents on record as mentioned in the application dated 8-9-2003 subject to the condition that the defendant pay a cost of Rs. 1,000/- to the plaintiff, since he has filed the documents at belated stage. The plaintiff shall also have a right of rebuttal of these documents as mentioned in the application dated 8-9-2003.

Appeal allowed.