

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Partition Suit No.-63 of 1984, Registration No.-537/14

Choudhary Rameshwar Rai & Others vs. Amola Choudharain & Others

11-08-2022

Wakaltan hazari have been filed on behalf of plaintiff and defendants. On perusal of the case record, it appears to the court that today this case is fixed for order on petition dated-26.07.2022 filed on behalf of the defendant no.-13,15,16, 18,20,21 & 23. In this petition, it has been submitted that plaintiff had not filed any document and documents with the plaint which was necessary to file with the plaint. It is further submitted that the suit has been filed in the years 1984 on 09.04.1984 and the plaintiff filed the documents on 19.07.2022 without taking the leave of the Court. Hence, the documents which has been annexed to the plaintiff shall not be received in evidence without leave of the Court at the hearing of the suit. It has been further submitted that the plaintiff very cunningly filed documents in the Court without leave of the Court with a witness of Karpardaj who filed affidavit for proving custody which is not proper as per provision of evidence Act. The documents filed by the plaintiff is within the knowledge of the plaintiff. Even after they didn't file the same. So unless and until, plaintiff file leave petition, the documents cannot and could not be received in suit for hearing. It is therefore, prayed that this Court be pleased to either return the documents to the plaintiff, or keep the documents in-abeyance.

A rejoinder of the petition dated-26.07.2022 has been filed on behalf of the plaintiff. In this rejoinder petition, besides its maintainability, it has been submitted that in the instant suit issues have already been framed by the Court. In order to expedite the trial of the suit, directed the plaintiff to file original document on 26.05.2022 by fixing the next date on 14.06.2022. These plaintiff in compliance of the order passed by the Court, filed the original documents in support of their claim. It has been submitted that as the plaintiffs have complied the order of the Court, there is no necessity of seeking leave from the Court. The averment made in para-1 to 5 of the petition dated-26.07.2022 are frivolous and only to linger the case. There is no merit in the petition, hence the same is fit to be rejected.

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Heard both the learned counsels of plaintiff and defendant on petition dated-26.07.2022 and perused the case record. On hearing and perusal of case record, it appears to the Court that this suit partition has been brought by the plaintiffs against 38 defendants on 09.04.1984 and since 1985 to 27.03.2009, this instant suit has been pending for appearance of the defendants. It further appears that on 16.05.2009, issues have been settled and record was fixed for filling original documents and list of the witnesses. Meanwhile, several defendants died and their legal representatives have been either substituted or proceedings U/O-XXII, Rule-4(4) of the C.P.C. has been initiated. It further appears that since 04.06.2009 to till 28.02.2011, the instant suit has been pending for filling of original documents and list of witnesses on behalf of parties. It further appears that on 14.03.2011 the suit was dismissed for want of prosecution and the same has been restored on 21.05.2011 vide order passed in Misc. Case No.-03/2011. Thereafter, this instant has been pending for issuing summon and hearing on different types of petitions filed by the parties. It further appears that this suit was fixed for hearing u/s-89 of the C.P.C. on 20.08.2019 and suit was fixed for evidence since 05.12.2019. Meanwhile, another petition for deletion of the name of defendant no-17 from the array of defendants on plaint and the same was allowed on 26.05.2022 and plaintiff was further directed to file the original documents. Thereafter, some documents have been filed on behalf of the plaintiff along with affidavit and a petition U/O-XVIII, Rule-3A of the C.P.C.

In the petition dated-26.07.2022, defendants raised some objections which are as follows-

- (1) The plaintiff didn't get the leave of the Court before filling documents,
- (2) Documents filed on behalf of the plaintiff has been filed by the Karpardaj without proving proper custody which is not proper as per provision of evidence Act.

For better understanding, it is expedient to introduce the Order VII, Rule-14(3) of the C.P.C. Order VII, Rule-14 of the C.P.C. postulates the provision relating to production of documents by the plaintiff. Order VII, Rule-14(3) says that A document which ought to be produced in Court by the plaintiff when the plaint is presented,

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or to be entered into list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not be received in evidence on his behalf at the hearing of the suit without the leave of the Court.

Whereas Order XIII of the C.P.C. postulates the provisions relating to production, impounding and return of documents. As per Order XIII, Rule-1 of the Code – (1) The parties or their pleader shall produce all the documentary evidence of in original where the copies thereof have been filed along with plaint or written statement on or before the settlement of issues. (2) The Court shall receive the document so produced if such documents have been filed in proper format as prescribed by the High Court.

The Court is of opinion that Order-VII, Rule-14(3) is akin to Order-VIII, Rule-1A(3) of the Code in connection with production of documents on behalf of the plaintiff and defendant. Both these rules cast the obligation upon plaintiff and defendant to produce those documents in the Court on which they wish to rely upon. Further Order-XIII, Rule-1 again makes it mandatory for the parties to produce their original documents on or before settlement of issues.

Hon'ble Supreme Court in *Sgandhi(dead) by Lrs. & Ans vs. P. Rajkumar in Civil Appeal No.-16491 of 2019* pleased to held that "*It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the Court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, Court must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the Court should take a lenient view when an application is made for production of the documents under sub-rule (3).*"

Hon'ble High Court of Judicature at Patna in *Ram Nath vs. Brij Kishore, AIR 1980 Pat 160* pleased to held that "*This rule does not exclude the discretion of the Court to receive documentary evidence at a subsequent stage of the proceedings.*"

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On conjoined reading of the provisions contained U/O-VII, Rule-14 & U/O-XIII, Rule-1 of the Code and order of the Hon'ble Apex Court & the High Court, the Court is of opinion that documents may be filed at the belated stage of proceeding even after settlement of issues. But so far as the objection regarding leave of the Court is concerned, the Court is of opinion that after settlement of the issues and also after allowing the petition for substitution on 26.05.2022, parties to the suit were directed to file the original documents. In this circumstances, there is no need to seek the leave of this Court to file documents. Hence, this Court is not inclined with the contention of the learned counsel of the defendants/ petitioners.

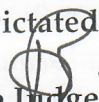
Second objection raised by the defendants/petitioner that documents filed on behalf of the plaintiff has been filed by the Karpardaj without proving proper custody which is not proper as per provision of evidence Act. In this context, the Court is of opinion that documents filed on behalf of the plaintiff is not consonance with the provision contained U/O-XIII, Rule-1 of Code. This rule makes it clear that the parties or their pleader shall produce all the documentary evidence of in original in the Court.

In Talewar Singh vs Bhagwan Das, Hon'ble Culcutta High Court held that *"the word 'produce' means not that the documents should be filed into the Court, but that they should be with the parties in the Court."*

It further appears that some of the documents filed on behalf of the plaintiff are above thirty years old and as per the provision contained u/s-90 of the Indian Evidence Act, such documents should be filed from proper custody and its explanation tells about the circumstances what is said to be proper custody.

Considering the facts and circumstances as discussed above, the Court is of pinion that there is no need for seeking leave of this Court for filling original documents in this case while the same have been filed in compliance of the order of the Court. But, the documents filed on behalf of the plaintiff has not been filed according to the mandate of the provision contained U/O-XIII, Rule-1 of Code. So, plaintiff is directed to take proper steps in this regard. Thus, petition dated-26.07.2022 filed on behalf of the defendants is disposed of as accordingly.

Fixing on 16-8-22 for compliance of the order of the Court and evidence

Dictated

Sub Judge-II
11.08.2022

*Hand the dt. comes
on behalf of Plaintiff
and defects on petition
dated - 24.5.17*