

Civil Revision

PRESENT: THE HON'BLE JUSTICE MD ABDUL GHANI

Judgement on 26.04.2010

C.O- 1179 of 2007

Smt Dola lahiri & Ans

versus

Smt Jaba lahiri & Ans

Point:

Production of document: Whether Court can direct production of document, which are not relevant –Code of Civil Procedure, 1908 O18 R 17

Facts:

The defendant filed an application seeking direction upon the plaintiff to produce the original title deed in respect of the suit property. Trial Court rejected the said application.

Held:

Since the title deed in question is having no nexus with the suit in question, question of issuing direction for production of the said title deed does not arise. Para 7

Cases cited -

1996(1) CLJ 236 – Smt sephali bera V Sutusar Kanti Banik; AIR 1977 SC 392 - Y B Patil & Ors V Y L Patil

Mr Sukumar Bhattacharyya

Mr Aniruddha Chatterjee

Mr Dipendranath Chander

For the petitioner

Mr Piyash Chaturvedi

Mr Debasish Purkait

Ms Rita Sinha

For opposite parties

The Court :

1) The instant application under Article 227 of the Constitution of India is directed against the order dated 12.3.2007 and earlier orders passed by the learned Civil Judge (Senior Division), 9th Court at Alipore at 24-Parganas (South) in Title Suit No. 46 of 1999. It would appear that the learned trial Judge by passing the order dated 12.3.2007 was pleased to reject the application under Section 151 of Code of Civil Procedure filed by the present petitioners-defendants seeking direction upon the plaintiff to produce the original title deed in respect of the suit property, but the learned Court below upon hearing the learned lawyers for the parties concerned and also considering the totality of circumstances, felt no need to issue direction for production of the deed in question. Further on scrutiny of the report it could be detected that on the previous occasion the learned Court below by passing an order dated 17.1.2007 rejected the defendants prayer for production of title deed in respect of the suit property upon a finding that defendants should not be allowed to fill up the lacuna by taking recourse to Order 18 Rule 17 of C.P.C. and as such no need for issuing such direction was felt necessary by the Court below.

2) Being aggrieved by and dissatisfied with the orders referred to above, the petitioners-defendants have come up before this Court with the prayer for setting aside the orders indicated above.

3)The only point for consideration is whether the impugned order dated 12.3.2007 and the earlier orders passed by the learned Court below do suffer from any impropriety or illegality or whether the said orders need any interference by this Court.

4)Mr. Sukumar Bhattacharyya, learned lawyer appearing for the petitioners while making submission drew this Court's attention to the contents of the order dated 12.3.2007 as also some previous orders including the order dated 17.1.2007 as well as some other important materials on record emphatically argued and submitted that learned Court below by passing the order dated 12.3.2007 and the previous orders committed mistake causing prejudice and miscarriage of justice to his clients inasmuch as the petitioners-defendants by filing an application under Order 18 Rule 17 C.P.C. before the trial Court prayed for recalling P.W. 1 with a view to putting some questions including the questions regarding custody of the original deed in respect of the suit premises as also its production before the Court. In support of his contention he has relied upon a decision reported in 1996 (1) CLJ 236 (Smt. Sephali Bera Vs. Sutushar Kanti Barik) and strongly urged that the rejection of the defendants' prayer has caused sufficient prejudice to his clients by depriving the defendants of putting the questions noted down in the application filed before the learned Court below. In fine, it has been submitted on behalf of the petitioners-defendants that in a case like the present one, the petitioners' application for production of the deed and putting other questions ought to have been allowed.

5) On the other hand, Mr. Piyush Chaturvedi, learned lawyer appearing for the O.Ps. referring to the materials on record including the affidavit and counter affidavit emphatically contended that learned Court below while passing the impugned order dated 12.3.2007 and the order dated 17.1.2007 did not commit any mistake or illegality inasmuch as from the existing circumstances of the case, the trial Court felt it unnecessary to issue direction for production of the original title deed in respect of the suit premises. Not that only, there is no

circumstances which could enable the trial Court to understand that the title deed is lying in custody of the plaintiffs-O.Ps. In support of his argument he has relied upon a ruling reported in AIR 1977 SC 392 (Y.B. Patil & Ors. Vs. Y.L. Patil) and urged that the learned Court below correctly passed the impugned orders by rejecting the petitioners application with a view to avoiding the

principles of res judicata as well as harassment to his clients.

Having heard the learned lawyers for the parties concerned and also after going through the materials on record it could be gathered that the petitionersdefendants by filing an application under Order 18 Rule 17 C.P.C. as also an application under Section 151 C.P.C. prayed for recalling the P.W. 1 with a view to putting some questions to him. The questions are as follows:

1. Relying on your answer that the Original Deed of the Land in respect of the Premises No. P-471, Lake Terrace Extension, P.S. Lake, Kolkata – 700 029, is not with you, please tell, where the same is lying?

2. When did you last saw the said Original Deed and at that time in whose custody the same was lying?

3. I put to you that the said Original Deed is in your custody and/or in the custody of your son, the plaintiff no. 2 and you and your son are not producing the same intentionally, as you have mortgaged the same illegally.

6) In my considered view, in the existing circumstances of the case the title deed is having no relevancy to the title suit no. 46 of 1999 inasmuch as the suit is not based on the title deed in question and instead the same is based on the probated of the will of mother-in-laws of the parties concerned. That apart, there is no circumstances which could persuade the Court that the deed in question is actually lying in the custody of the O.Ps.

7) Since the title deed in question is having no nexus with the suit in question, question of issuing direction for production of the said title deed does not arise and accordingly question of putting questions to the P.W. 1 is apparently uncalled for and not warrantable in the eye and estimation of law. In this view of the matter I am satisfied to conclude and hold that the finding arrived at by the learned Court below does not suffer from any impropriety or illegality. Furthermore, the petitioners-defendants while preferring the application under Article 227 of the Constitution of India failed to mention the particulars of the other orders excluding impugned order dated 12.3.2007. Taking the aforesaid circumstances into my conscious consideration and also regard being had to the principles of the rulings relied upon by the parties concerned I am to hold that the ruling relied upon by the learned lawyers appearing for the petitioners is having no manner of application in the present case simply because, in the reported case, Hon'ble Court upon consideration of the facts and circumstances of the case came to a finding that the rejection of the prayer for recalling the witness concerned would cause prejudice to the petitioner. But in the instant case, situation being different question of causing prejudice does not arise. Accordingly, in my view the finding arrived at by the Court below is quite sustainable and the same needs no interference by this Court. Resultantly, the application under Article 227 of the Constitution of India is liable to be rejected. Consequently, the application stands rejected.

However, there will be no order as to costs.

Urgent xerox certified copy of this order be given to the parties expeditiously, if applied for.

(Md. Abdul Ghani, J.)