

Achyatananda Hota and ors. Vs. Khatija Bibi and ors.

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Court : Orissa

Decided On : Oct-10-1966

Reported in : AIR1967Ori156; 33(1967)CLT206

Judge : S. Barman, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 7, Rule 14 - Order 11, Rule 15

Appeal No. : Civil Revn. No. 244 of 1964

Appellant : Achyatananda Hota and ors.

Respondent : Khatija Bibi and ors.

Advocate for Def. : R.N. Misra and ;R.C. Patnaik, Advs.

Advocate for Pet/Ap. : B.K. Pal, ;G.B. Patnaik and ;D.P. Mohapatra, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

S. Barman, J.

1. The point for consideration in this Civil Revision filed by the defendants is; Are the defendants entitled to have inspection of the documents which are mentioned

in the list filed under the provision of Order 7 Rule 14(2) of the Civil Procedure Code? The question arose thus: On September 1963 plaintiffs filed a suit for redemption of the mortgage bond dated 15-6-1920 against the defendants including the mortgagees defendants. 2, 3 and 16 who are petitioners in this Civil Revision. In the plaint after verification a list of documents including 9 items was annexed. The description of these Hems of documents included in the list was not clear. For reference the list as annexed to the plaint is quoted as follows:

'The documents to be relied upon:

1. Plaint of Gangaprasad if available from court record
2. Copies of records of Civil Court.
3. Settlements Parcha in respect of Khunti Nos. 30 and 68 of mouza Deharipally.
4. Sale deed executed by plaintiffs 1 and 2 in favour of plaintiff No. 3.
5. Copy of notice sent by plaintiffs to defendant No 2 through Mukhtar.
6. Reply of Sri J. Panigrahi, Advocate.
7. Postal receipts of M.O. of Rs. 100/- and return of the same postal acknowledgment.
8. Copies of orders of Criminal Court is available.
9. Mortgage deed relating to suit lands in custody of Defendant No. 1 or 21.'

2. The defendants sought for clarification of items 1 and 2 of the said list of documents relied upon by the plaintiffs. Plaintiffs gave clarification of the said 2 items, by giving the suit No. and other particulars. Thereafter the defendants gave notice to the plaintiffs under Order 11, Rule 15 of the Civil Procedure Code for inspection The plaintiffs replied that the defendants were not entitled to inspection be cause they are not referred to in the plain I. Thereupon the defendants applied to the Court under Order 11, Rule 18 for directing the plaintiffs to give inspection. The learned Trial Court dismissed the said application. Hence the Civil Revision.

3. The point is: Are the defendants entitled to inspection of these documents? On the question the views are divergent. The view of the Madras High Court is this:

'The only reasonable way of reading Order 7, Rule 14, with Order 11, Rule 15, is to hold that the expression 'referred to' is equivalent to 'entered in the list.' For this purpose the list must be deemed to be part of the plaint and consequently inspection can be granted of documents entered in a list attached to the plaint.'

The Calcutta High Court on the other band held the contrary view namely that-

'A defendant is not entitled, as of right to inspect documents relied on by the plaintiff and of which a list under Rule 14, Order 7 is annexed to the plaint as such documents are not documents referred to in Order 11, Rule 16 of the Code.'

Ramnathan Chettier v. Annamalai Chettier, AIR 1931 Mad 825; and Chandmull Goneshmal v. Dhanraj, AIR 1920 Cal 416

4. With great respect, I do not accept the Madras view. In my opinion the documents of which inspection can be had must be referred to in the pleadings or affidavits. This point was argued at length on behalf of both sides by referring to the decisions of the different High Courts in support of their respective contentions. A subsequent Division Bench decision of the Calcutta High Court held as follows:
r:--

'Documents of which inspection can be had under Order 11, R 15. Civil Procedure Code, do not include documents which are merely mentioned in the list filed under the provisions of Order VII Rule 14(2) of the Code. On the question as to what is meant by the expression 'referred to' occurring in Order 11. Rule 15 of the Civil Procedure Code there has been a divergence of judicial opinion. The documents which are sued upon or the effect whereof is merely mentioned in the pleadings must be distinguished from other documents on which a party relies merely as evidence in support of his case. In other words, the documents envisaged in Order 11, Rule 15, do not refer to such other documents which are merely produced by a party, as evidence in support of his case, that is, documents which are filed in a list under the provisions of Order VII, Rule 14(2) of the Code.'

Braja Behari Sen v. Arun Coomar Bose I.L.R (1953) 2 Cal 309.

5. In my opinion the said Division Bench decision of the Calcutta High Court relying upon the earlier Single Bench decision is the correct view This view is supported by the position that Order VII, Rule 14(2) refers to documents which are not merely in the possession or power of the party filing the same but also documents which are not in the possession or power of such a party Therefore the documents of which inspection can be had under Order XI Rule 15 do not and cannot include documents which are merely, mentioned in the list filed under the provisions of Order VII Rule 14(2) of the Civil Procedure Code some of which may not be in the possession or power of the party filing the same. Order XI Rule 15 does not contemplate inclusion of such documents

6. Similar view was also taken in a Nagpur case in Nagpur Glass Works Co. Ltd. v. Shree Onama Glass Works Co. Ltd., AIR 1938 Nag 239 It is also consistent with a view taken in Quiltar v. Heatly, (1883) 23 Ch D 42, 50 which is a case under Order XXXI Rules 14-17 of the Rules of the English Supreme Court corresponding to Order XI, Rule 15 of the Indian Civil Procedure Code. In the English case, the documents in question of which inspection was sought for were referred to in the pleadings.

7. This view is further confirmed by the provisions of Order VI Rule 15 which provides that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case; the person verifying shall specify by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true The list of documents (documents to be relied upon) as quoted above is annexed after the verification Therefore, the said list is not intended to be a part of the plaint. So, the list of the documents not being a part of the plaint is not required to be verified. The list is not a part of the pleadings. Therefore, it cannot be said that documents included in the list are, documents to which reference is made in the plaint The defendants cannot under Order XI Rule 15 claim inspection of the documents included in the list.

8. In my opinion the learned Trial Court was correct in rejecting the defendants' application for inspection of the documents; he acted in exercise of his jurisdiction vested in him and there was no illegality or irregularity in the said order

9. In this view of the case, the order of the learned Trial Court is upheld. The Civil Revision is dismissed.

10. Costs will abide the result of the suit.

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