

Ashok Kumar and Others Vs. Smt. Surjit Kaur

Ashok Kumar and Others Vs. Smt. Surjit Kaur

SooperKanoon Citation : sooperkanoon.com/689955

Court : Delhi

Decided On : Sep-29-1999

Reported in : 2000IAD(Delhi)291; 82(1999)DLT530

Judge : Dr. M.K. Sharma, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 13, Rules 1 and 2

Appeal No. : C.R. No. 1353/1997

Appellant : Ashok Kumar and Others

Respondent : Smt. Surjit Kaur

Advocate for Def. : Mr. P.N. Talwar, Adv.

Advocate for Pet/Ap. : Mr. Sandeep Sethi, Adv

Judgement :

ORDER

Dr. M.K. Sharma, J.

1. This petition arises out of the order dated 15.11.1997 passed by the Civil Judge, Delhi in Suit No. 303/1984 dismissing the application filed by the petitioner/defendants under Order 13 Rules 1 & 2 seeking for production of certain documents and also for allowing the petitioner to lead evidence on the basis of the

said documents.

2. The suit was instituted by the respondent/plaintiff seeking a decree for possession of the suit premises against Smt. Sheela Devi, who was the predecessor-in-interest of the petitioners/defendants. In the said suit, on the pleadings of the parties issues were framed and the suit was listed for recording evidence of the plaintiff. At that stage, i.e. on 11.8.1997 the court framed an additional issue with regard to non-joinder of necessary party. Immediately thereafter i.e. on 21.8.1997 the petitioner/defendants filed the aforesaid application under Order 13 Rule 2 of the Code of Civil Procedure contending inter alias that as the onus of proving the aforesaid issue has been placed upon the defendants the defendants are required to prove certain documents which are necessary for proper adjudication. The said application was considered and was dismissed by the aforesaid impugned order, out of which the present petition arises.

3. Mr. Sandeep Sethi appearing for the petitioner submitted that the aforesaid documents, details of which are given in paragraph 10 of the petition are necessary and vital for proper adjudication and effective determination of the issues arising in the suit. He also submitted/that there was no delay in filing the aforesaid application as the same was filed immediately after framing of the additional issue in the suit. The said documents, according to him, were not in custody and possession of the defendants and were with the predecessor-in-interest of the defendants and immediately on recovery of the same and after being aware of the contents thereof the application has been filed. He also submitted that the said documents would disclose that Prakash Wanti who is admittedly the original owner of the suit property had executed a valid WILL bequeathing 1/2 of the property in favor of the predecessor-in-interest of the defendants and therefore, the said document is vital and necessary for the purpose of adjudication of the present suit.

4. Mr. Talwar, appearing for the respondent however, submitted that the trial court rightly rejected the said application as it did not satisfy the pre-conditions for receiving additional documents at such a later stage. He relied upon the provisions of Order 13 Rule 2 CPC while making his submissions that a party cannot be

allowed to produce documents at a late stage, for it was the duty of the defendants to produce all documents at the time of filing of the written statement and in no case later than the settlement of issues. He contended that the said documents have also no relevancy with the pleadings of the parties. He submitted that even assuming that the said documents were in custody of the predecessor-in-interest of the defendants and were recovered by them from her custody and possession after her death the same was discovered before 11 years from the date of filing of the application and that there is no Explanationn for not filing the same at the earliest.

5. The language of Order 13 Rules 1 & 2 CPC is clear and unambiguous. The said provisions lay down that the parties have to file all documents in their custody and possession and on which they seek to rely upon, at the time of filing of their pleadings and in any case prior to the date of the settlement of issues. Rule 2 of Order 13 of the Code talks about the effect of non-production of the document providing that no documentary evidence in the possession or power of any party which should have been produced but has not been produced in accordance with the provisions of Rule 1 shall be received at any subsequent stage of proceedings unless good cause is shown to the satisfaction of the court for non-production thereof and the court shall record reasons for doing so. The court of course has been provided with the discretion to accept document at a subsequent stage also. It is also settled that the court is entitled to consider not only the reasons for non-production but the authenticity of the document in evidence and its relevancy with the issues in controversy in the suit.

6. When the facts of the present case are considered against the touch-stone of the aforesaid position, it would be crystal clear that the documents were in custody and possession of the defendant for the said documents were admittedly in the custody and possession of Smt. Sheela Devi the original defendant, of whom the present defendants are the legal representatives. Even assuming that the said documents were not even in custody and possession of the present defendants at the time when the issues were struck, it is the specific case of the defendants that the said documents came to their notice and possession on the death of their mother, upon search of the documents left behind by her. Admittedly, Smt. Sheela

Devi died on 24.1.1986. When the statements made in the application filed under Order 13 Rule 2 CPC are considered it would be found that a specific statement has been made that it was only on her demise and while searching her papers that the defendant was able to lay her hands upon the papers.

7. Thus, according to the own case of the defendant the said documents came to her hands somewhere in the year 1986. No Explanationn has been given as to why the said documents were not placed on record any time immediately thereafter and she had to wait till the filing of the present application. Even the stand of the defendant that the said documents have now become necessary and vital in view of framing of additional issue is also without any merit, for the said documents cannot have any relevance with the issue framed now i.e. 'as to whether Santosh Jaitley is a necessary party to the suit or not?' The additional issue has been framed now on the basis of the pleadings filed by the parties particularly the replication filed by the plaintiff. The trial court, has taken note of the fact that the original defendant namely - Smt. Sheela Devi did not either produce or rely upon the documents in question and after her death the defendant did not produce the said documents for 11 long years, which fact according to the learned Trial Court, gives rise to suspicion as regards their genuineness particularly when the plaintiff has challenged the validity of the said documents and has stated that the said documents are fabricated and manufactured.

8. The aforesaid conclusion arrived at by the trial court is in accordance with the settled position of law as referred to above and I find no infirmity in the same and the petition stands dismissed as having no merit.