

Kartar Singh Vs. Sube Singh

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Court : Delhi

Decided On : Aug-01-1997

Reported in : 68(1997)DLT815; 1997(43)DRJ302

Judge : Devinder Gupta, J.

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

Appeal No. : Civil Revision Appeal No. 199 of 1995

Appellant : Kartar Singh

Respondent : Sube Singh

Advocate for Pet/Ap. : A.K. Sharma, Adv

Judgement :

Devinder Gupta, J.

(1) PETITIONER-DEFENDANT has challenged the order passed on 16.2.1995 by Shri S.K. Tandon, Civil Judge, Delhi in Suit No.754/93 by which the plaintiff-respondent was permitted to produce documents during the course of his evidence.

(2) PETITIONER'S counsel was heard on 8.8.1997. None appeared for the respondent.

(3) PLAINTIFF-RESPONDENT on 13.1.1992 filed a suit for specific performance against the defendant-petitioner. Needless to add that receipts mark A and mark B were permitted to be produced on 16.2.1995, during the statement of the plaintiff. The same were neither produced by the plaintiff along with the plaint, nor the were relied upon. The documents were permitted to be produced when the plaintiff was deposing in support of his case as Public Witness 1. That part of the statement at which the documents were permitted to be produced reads:

'THEREAFTER, Panchayat of village Kanjhawla intervening the matter and a compromise was arrived between the parties in 1989 and it was decided by the Panchayat that the deft. will retransfer the land after taking Rs.80,000.00 . And one month time was given to pay the amount. The said compromise is Ext.PW-1/1 (Objected to), which bears my signatures at Point-A and signatures of deft. at Point-B. According to the said compromise I paid the amount to the Panchayat. At this stage Plaintiff's counsel wants to exhibit the receipts which were duly executed. The deft.'s counsel opposed to the filing of the receipts at this stage. After hearing both the parties as well as going through the plaint, the plaintiff is allowed to file the receipts and exhibit the receipts according to law subject to cost of Rs.200.00 . The deft.'s counsel refused to accept the cost. The receipt of the said amount is Mark-A. The deft. received the said sum of Rs.80,000.00 from the Panchayat and executed a receipt thereof. The same is Mark-B and after receiving the said amount signed the Noc Form in presence of the Panchayat. The Competent Authority also gave No Objection Certificate. The photocopy of the said Noc was Mark-C.'

(4) In the aforementioned quoted portion of the order the Court has not recorded its reasons that why the plaintiff, who had failed to produce the receipts, being the basis of his claim along with the plaint or before settlement of issues was permitted to produce the same at a late stage.

(5) Rule 14 read with Rule 19 of Order 7 of the Code of Civil Procedure disables a plaintiff from producing any documentary evidence in his possession or power, if he had not included the same in the List of Documents relied upon or in the list of documents filed with the plaint. Rule 1 of Order 13 requires documentary evidence

to be produced, which are in power and possession of the parties, at or before settlement of issues. Rule 2 of Order 13 of the Code talks about the effect of non-production of the document 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 requirement 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, however, has a wide discretion with regard to the reception of documents, which were not produced with the plaint or entered in the list of documents. But such discretion has to be exercised on sound judicial principles.

(6) As noticed above, neither any reason was disclosed for not producing the documents with the plaint, nor it was stated that why the documents were not mentioned in the list of documents relief upon. No case was made out for late production. The object of the abovementioned provisions of Rules 1 & 2 of Order 13 is to prevent fraud by late production of suspicious documents. There cannot be a valid reasonable objection for receiving document at the late stage, when genuineness of the same is unimpeachable and a satisfactory Explanation is rendered for late production, but for reasons to be recorded permitting production at a late stage. Court is bound to record its reasons for receiving documents beyond time. Since the impugned order does not record any reasons, nor any reasons were disclosed, the trial court committed material irregularity in exercise of its jurisdiction in permitting the plaintiff to produce the two receipts. For that reason alone the impugned order is liable to be set aside. Civil Revision accordingly is allowed. Impugned order is set aside. Documents, namely, receipts mark A and mark B, which were permitted to be produced by the plaintiff are directed to be taken off the record.

(7) Trial court record be sent back forthwith.

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