

Lachhamandas Vs. Deep Chand

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Court : Rajasthan

Decided On : Apr-16-1973

Reported in : AIR1974Raj79; 1973()WLN281

Judge : Kan Singh, J.

Acts : [Evidence Act, 1872](#) - Sections 8; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 151 - Order 13, Rule 2

Appeal No. : Second Appeal No. 99 of 1971

Appellant : Lachhamandas

Respondent : Deep Chand

Advocate for Def. : Sumer Chand and; Rajesh Balia, Advs.

Advocate for Pet/Ap. : D.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a defendant's second appeal arising out of a suit for ejectment from a shop situated at Dargah Bazar. Aimer and which bears No. A. M. C. VII/421. The shop was rented out by the plaintiff-respondent to the defendant appellant on a

monthly rent of Rs. 25/- per month. The ejectment was sought on the ground that the 'plaintiff required the suit shop for his bona fide personal necessity, as the plaintiff's son Gheesulal was to be settled in business of fancy stores in that shop. The tenancy was determined by a notice dated 7-6-1967.

2. The defendant admitted the tenancy. He also admitted the receipt of the notice terminating the tenancy, but he disputed that the plaintiff had any bona fide need for the suit shop. He asserted that the plaintiff was desirous to increase the rent and has consequently filed the suit with this oblique motive.

3. The learned Munsif, Aimer, before whom the suit was filed set down only one issue for trial about bona fide reasonable necessity of the plaintiff for the suit shop,

4. Both the parties led their evidence. The learned Munsif held that the plaintiff had established the bona fide personal necessity for the suit shop and in consequence he decreed the suit for ejectment. He further directed that the plaintiff shall be entitled to receive Rs. 25/- per month as mesne profits from the defendant till the delivery of possession.

5. I may pause here to say that the plaintiff closed his evidence on 17-10-1968. On 7-1-1969 the case was fixed for the defendant's evidence, but on that date no witness was present and accordingly the case was adjourned to 11-3-1969. On the last mentioned date the defendant examined himself and he produced two witnesses and then closed his evidence. The case was then adjourned to 8th April. 1969, for arguments. On 4-4-1969 the defendant made an application under Section 151. C. P. C. He stated therein that there were talks between the plaintiff and the defendant that the defendant should increase the rent to Rs. 60/- per month and the plaintiff would then withdraw his suit. The parties then fixed up a second talk for the following day at 9 A. M. for finalising the matter. Expecting that the plaintiff would come to his shop, the defendant arranged for a tape recorder from one Sham of Lakhani Kotri. Ajmer. As per plan the plaintiff visited the defendant's shop at about 9 A.M. and then whatever talk had taken place between the plaintiff and the defendant, was recorded on tape. It was also stated that one Dhallumal had also joined in the talk and his utterance too had gone on the tape. It was asserted in the application that it was clearly stated by the plaintiff that the

rent of the shop be increased to Rs. 60/- a month. It was also averred that the plaintiff had also admitted that he had been increasing the rent of his another tenant Chanomal.

6. Accordingly it was prayed that an opportunity be afforded to the defendant to lead additional evidence of tape recording and the oral evidence regarding conversation that was taped. The application was supported by an affidavit of the defendant

7. The plaintiff opposed the prayer for additional evidence. The plaintiff averred that the application was mala fide and the so-called tape was manipulated, fabricated and was accordingly denied. It was further pleaded that this case was not put in the pleadings or the issue and, therefore, it would prejudice the plaintiff if any additional evidence were taken.

8. By his order dated 13-5-1969 the learned Munsif dismissed the application saying that the application was not maintainable under Section 151, C. P. C. Then a second application was made by the defendant and it met the same fate. Eventually the suit was decreed by the learned Munsiff.

9. Against the decree of the learned Munsif, the plaintiff went up in appeal to the Court of District Judge, Ajmer, who assigned the appeal for disposal to the learned Additional Civil Judge. Ajmer. During the course of the Shearing of the appeal before the learned Addl. Civil Judge an application under Order 41, Rule 27, C. P. C., was made by the defendant-appellant for taking additional evidence which had been wrongly refused by the trial Court. The learned appellate Judge observed that the discretion exercised by the trial court was perfectly justified. He went on to say that without the necessary pleadings the evidence cannot be allowed to be adduced, as it was a settled principle of law that no amount of evidence can be led on the point which, has not been pleaded in the pleadings. The learned appellate Judge pointed out that the defendant had not sought any amendment of his written statement regarding this additional facts. As regards the subsequent application dated 21-7-1969 made before the trial Court the learned Judge observed that it purported to be under Order 18 Rule 17, C. P. C. read with section 151. C. P. C. but according to the learned Judge the application did not fall within the scope of

Order 18. Rule 17, C. P. C., as this rule does not permit a party to produce any additional evidence. The learned appellate Judge then considered whatever evidence was on the record and affirmed the findings of the trial court about the bona fide personal necessity of the landlord for the suit premises. In the result, the learned Judge dismissed the appeal.

10. In assailing the decree of the learned Additional Civil Judge, learned counsel for the appellant has raised a twofold contention. In the first place he submitted that the courts below were in serious error in not permitting the defendant to lead evidence regarding the subsequent talk between the parties, by producing the tape record and also the witnesses relating to the conversation that was so recorded on tape. This additional evidence, according to the defendant-appellant, went to show that the plaintiff had no bona fide reasonable necessity for the suit premises, but he had an oblique motive of only getting more rent for the shop. Then further it was submitted that even according to the evidence already on record, the bona fide personal necessity of the plaintiff for the suit premises was not established.

11. During the course of the hearing an affidavit was filed on 12-4-1973 to the effect that Gheesulal, who was employed as a clerk in the Bank of Rajasthan Ltd., Aimer Branch, had left his service an year back and had been recently allotted a fair price shop by the District Supply Officer by his order dated 21st February, 1973. This affidavit was made with a view to having it on record as additional evidence for showing that the plaintiff's son Gheesulal was no more in need of the suit premises. So far as this affidavit was concerned I indicated during the course of the hearing that I am not going to take this affidavit on- record as it seeks to introduce such facts as would not necessarily have a bearing on the question whether on the date of the suit the plaintiff had any necessity for the suit premises.

12. I may now turn to the question whether the additional evidence Should have been allowed to be taken regarding the alleged tape recorded conversation between the parties. While learned counsel for the appellant endeavoured to show that such evidence could be adduced under Order 13, Rule 2, C. P. C., or for that matter under Section 151. C. P. C., learned counsel for the respondent submitted

that mode of trial of a suit having been laid down under Order 18, C. P. C. and the defendant having closed his evidence, there was no provision which enables the Court to take additional evidence. Neither Order 13 Rule 2, C. P. C., is applicable, nor could Section 151. C. P. C. 'be resorted to according to learned counsel.

13. So far as the admissibility of tape-recorded statements is concerned it is now well settled that they are admissible in evidence though in appreciating such evidence certain considerations have to be kept in view. In *Hopes v. H. M Advocate* (1960 Scots L. T. 264) tape-recorded conversation which took place between a complainant and a blackmailer was played before the jury and sought to be put in evidence by a police officer who had listened to the conversation as it was transmitted through the loudspeaker. Objections were raised to the admissibility of the said evidence. The learned Judge overruled the objection as follows:

'New techniques and new devices are the order of the day. I can't conceive, for example, of the evidence of a ship's captain as to what he observed being turned down as inadmissible because he had used a telescope, any more than the evidence of what an ordinary person sees with his eyes becomes incompetent because he was wearing spectacles. Of Course, comments and criticisms can be made, and no doubt will be made, on the audibility or the intelligibility or perhaps the interpretation, of the results of the use of a scientific method; but that is another matter, and that is matter of Value not of competency. The same can be said of visual observation by a witness who says he sees some thing his evidence can be criticised because of his sight or because of the sort of glasses he is wearing and so on, but all these matters are matters of value and not of competency.'

The above passage has been quoted with approval in a recent case of the Supreme Court reported as *Rama Reddy v. V. V. Gin* AIR 1971 SC 1162. The same view had been taken in a number of earlier cases of the Supreme Court such as *Pratap Singh v. State of Punjab*, AIR 1964 SC 72 and *Yusufalli Esmail Nagree v. State of Maharashtra*. AIR 1968 SC 147.

14. It will, however, be observed that this has to be done with caution. It has been observed in *R. M. Malkani v. State of Maharashtra*. AIR 1973 SC 157 tape recorded conversation is admissible provided first the conversation is relevant to the matters in issue; secondly, there is identification of the voice, and thirdly, the accuracy of the tape-recorded conversation is proved by eliminating the possibility of erasing the tape-record. It was observed in this case that a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 8 of the Evidence Act. It is *res gestae*. It is also comparable to a photograph of a relevant incident. It was pointed out that when a Court permits a tape recording to be played over it is acting on real evidence if it treats 'the intonation of the words to be relevant and genuine. The fact that tape recorded conversation can be altered is also borne in mind by the Court while admitting it in evidence.

15. In a case reported as *R. v. Robson* (1972) 2 All ER 699 the learned Judge pointed out that tape recordings were admissible for the following reason--

(i) the court was required to do no more than satisfy itself that a *prime facie* case of originality had been made out by evidence -which defined and described the provenance and history of the recordings up to the moment of production in court and had not been disturbed on cross-examination; in the circumstances of that case that requirement had been fulfilled;

(ii) the court was satisfied, on the balance of probabilities, that the recordings were originals and authentic and their quality was adequate to enable the jury to form a fair assessment of the conversations recorded in them and should not be excluded on that account

16. There is thus no doubt that a tape recorded version of a conversation is admissible in evidence.

17. The next question is whether the Court is competent to permit taking of additional evidence of subsequent to the closing of his evidence a party prays for the production of additional evidence.

18. Order 13 Rule 2, C. P. C., to my mind, cannot be resorted to in the circumstances like the present Order 131 Rule 1, C. P. C., enjoins 'the parties to produce at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely and which has not already been filed in the Court and all documents which the Court has ordered to be produced. Order 13. Rule 2, C. P. C., lays down that no documentary evidence in the possession or power, of any party which should) have been but has not been produced in accordance with the requirements of Rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

This prohibitory rule has to be read in the context of forgoing Rule 1. The prohibition is against such documentary evidence as was in the possession or power of any party and Which should have been produced at the first hearing of the suit. The rule, therefore, does not deal with the production of any document or evidence. Which did not exist on the date of the first hearing, but came into existence later.

19. Learned counsel for the appellant then fell back on Section 151, C. P. C. namely, the inherent powers of Court He emphasised that such evidence would be' necessary in the ends of justice and could be taken under Section 151, C. P. C.

20. Learned counsel for the respondent, however, maintained that Order 18 is exhaustive of the procedure regarding the trial of a suit and when once a party has closed Its evidence, he cannot produce any additional evidence. No direct authority has been brought to my notice by any of the learned counsel. The rules of procedure, though have to be followed, are only meant for advancing the 'cause of justice. While there is no express provision to enable the taking of additional evidence once a party, has closed its evidence, at the same time there is no disabling provision either to prohibit such a course. I just put to the learned counsel for the respondent a situation where a party had made a damaging statement in a Court of law in some other matter and that was being sought to be

produced as additional evidence. Then would not the Court be competent to take that statement of the party on record in the interest of justice.? Legal position has to be tested by considering such situations as may arise. Learned counsel could not afford a satisfactory answer. I should think the Court would be competent in such a situation to take additional evidence provided the other side is afforded adequate opportunity to meet such additional evidence. Therefore, if some important evidence has come into existence subsequent to the closing of the evidence by a Party., then the Court is, not debarred from taking such additional evidence on record in the interest of justice. However; where the evidence in the shape of a tape recorded statement has to be taken, as in the present case, certain safeguards have to be observed. There should be no possibility of tampering' of the statement. It is well known that a tape recorded statement could be tampered with. If the tape recorded statement is played; and it is re-recorded on another machine then at the will of the party taking the second tape, the portions which it wants to eliminate, could easily be eliminated by stopping the second machine at convenient points and allowing the original to play out at those points. There-after the second tape record could yet be edited once again by, a similar device,

Then in exercising its Inherent power the Court may keep in view' such other considerations as would have bearing on the administration of justice.

21. In the present case I find that though the application for taking on record the additional evidence was made, the transcripts of the conversation on the tape were not placed on record. With a view to prima facie satisfying myself I asked learned counsel for the appellant to produce the transcript of 'the conversations, which he did. I went through it. The first utterance is by Deepchand. He is alleged to have stated as follows:--

nhipUn%&>kj; ikap lkS ekFks djks rkSdjks A eq>s eatwj gS A eS rhu cjl eWuhvkWMZj ysrk jgk A >wV ugha cksywaxkA vkuk tkuk D;k gS A vkVk rks xouZes UV nsxh A

What preceded this utterance is not recorded. Then the answer of Lachhmandas is --

y{eunkl%&&vkVk; rks xouZes UV ns gh xh A

Then next utterance is again by Deepchand:--

nhipUn%&&pkgs; ty tkos] pkgs xy tko]vkVk rks nsxh gh A Hkys dksbZ flU/kh vkos A

So far one cannot make out what was the conversation about.

Then the next query is said to be by Lachhmandas, which is as follows:--

y{e.knkl%&&vkius; tks lkB :i;s fdjk;kdgk nsoks A lkB :i;k dc ls ysaxs A

To that answer is :--

nhipUnz%&& ftl jkst ls nkck fd;k A tkMhtks gS ok eS rq>s p< x;k gS] vHkhvukt gksrk ckjg vkus lsj rks rqe tSlk dgrk oSlk djrk A esjh vknr ,Slh ugha A

So far what is noteworthy is that in any of the answer the plaintiff has not said that he would be taking Rs. 60/- per month. The matter is put only in questions made by the defendant, inhere is a clear possibility of the defendant changing or tampering the tone or substance of his own question.

22. Then talk about Lekhumal is Introduced. It is suggested that Lekhumal was saying about the rent at Rs. 40/-. This seems to have annoyed Deepchand, who stated like this:--

nhipUn%&&twrk; ekjuk A dehus ls esjh ckrugh gqbZ A ekfyd gks rks rqe gks A rqe c<+kbZ ugha djuh gS A

In his examination-in-chief he has Stated that he would be opening the fancy stores in the suit shop and that was why 'he wanted it to be vacated. The necessity in the present case cannot be said to be such as would arise on some future date only. On considering the statement of Gheesulal as a Whole I am satisfied that the shop was needed by Gheesulal for the purpose of starting a fancy stores. He could take appropriate steps in this direction only after he had the shoo in his possession. If, therefore. Gheesulal were to start the business, after he had done

B, Com,, it did not mean that he had no need in praesenti for the suit shop. One cannot place such a narrow interpretation on the statement of Gheesulal as the learned counsel wants me to do.

Considering the effect of the entire evidence I am satisfied that the courts below have concurrently reached a correct conclusion,.

30. The appeal has thus no force and is accordingly dismissed with costs.

31. Learned counsel for the appellant orally prayed for leave to appeal under Section 18 of the Rajasthan High Court Ordinance. 1949, but in the facts and circumstances I am not inclined to grant such a leave. The leave to appeal is therefore, refused.

32. Learned counsel for the appellant finally prayed for giving some time to the defendant-appellant to vacate the shop. Three months' time is allowed to him provided he pays or deposits all the arrears of rent, if any, and thereafter pays or deposits compensation (at the rate of rent) month by month on the fifteenth of the following every month till he vacates the premises.

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