

S. Mahimaidoss Vs. Vanathayya and Two Others

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Court : Chennai

Decided On : Apr-07-2000

Reported in : AIR2000Mad288; 2000(2)CTC453; (2000)IIMLJ478

Judge : P. Sathasivam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 151 -- Order 13, Rule 1 and 2

Appeal No. : C.R.P. No. 950 of 1999 and C.M.P. No. 5169 of 1999

Appellant : S. Mahimaidoss

Respondent : Vanathayya and Two Others

Advocate for Def. : Mr. M. Balasubramaniam, Adv.

Advocate for Pet/Ap. : Mr. A.A. Lawrence, Adv.

Judgement :

ORDER

1. Second defendant in O.S.No.10219 of 1996 on the file of II Additional Judge. City Civil Court. Madras, aggrieved by the Order dated 23.2.99 made in I.A.No. 6986 of 1998, dismissing his petition filed under Section 151, C.P.C.. to receive the list of documents filed by him, has filed the above revision before this Court.

2. The first respondent herein-plaintiff filed in O.S.No.10219 of 1996 prayed for declaration of title to the suit property and for a decree of possession directing the defendants to quit and deliver vacant possession of the suit property to plaintiff. The case of the petitioner before the trial court was that he has acquired title to the suit property by adverse possession. He has also pleaded in his written statement that the plaintiff had issued a legal notice dated 29.4.77. directing him to quit and deliver vacant possession of the suit property. The plaintiff also claimed damages from him. The trial court framed issues on 12.11.1997 and directed the parties to the suit to file list of documents in two weeks. It is stated that the reason for not filing the document dated 29.4.77 at the earliest stage is that the first respondent/plaintiff has not filed any reply statement controverting the defence pleas raised by him in the written statement and as such he thought that the plaintiff would admit in his evidence that he has sent the legal notice dated 29.4.77 to him viz., the 2nd defendant in the suit. Since the plaintiff in his cross-examination denied having sent any legal notice dated 29.4.77 to him. it became imperative for him to mark this document on his side. There is a delay of 148 days in filing the application to receive the document. He filed I.A.No.6985 of 1998 to condone the delay in filing the application to receive the document and I.A.No.6986 of 1998 to receive the document dated 29.4.77. Both the I.As.. were filed before the trial court on 23.4.98. Since the trial court closed his evidence on 23.4.98. he filed I. A. No.6987 of 1998 to reopen his evidence in the suit. The said applications were resisted by the plaintiff by filing a common counter statement. The petitioner herein was not at all examined in the suit at any point of time, hence it is stated that the trial court grossly erred in coming to the conclusion that the document dated 29.4.77 cannot be received at this last stage when the plaintiff and the 2nd defendant had already been examined. But the real fact is that the 2nd defendant was not at all examined in this case so far. The trial court dismissed all the applications, accordingly he preferred C.R.P.Nos. 2247, 2248 and 2249 of 1998 against the orders passed by the trial court dated 29.7.98. This Court dismissed all the Civil Revision Petitions on 18.8.98. The Review Application Nos. 96, 95 and 94 1998 in C.R.Ps. 2247, 2248. and 2249 1998 preferred against the order made in I. A. 6985 1998 praying for condonation of 148 days delay in filing the application to receive the document dated 29.4.97 was dismissed by this Court

on 2.11.98. The other two Review Applications Nos. 95 and 94 1998 in C.R.Ps.2248 and 2249 1998 have been allowed by this Court on 19.11.98 with direction to the lower court to pass orders on merit with regard to reception of documents after giving opportunity to all the parties. Pursuant to the direction, the trial court took up the application for re-hearing. The plaintiff made an endorsement in I.A.No.6987 of 1998 saying no objection to allow the application. As regards I. A. 6986 1998, the plaintiff objected to receive the document dated 29.4.77. The trial court dismissed I.A.No. 6986 of 1998 on 23.2.99, against which the petitioner has filed the present revision.

3. First respondent filed a counter affidavit disputing various averments made by the petitioner. It is stated that in view of the dismissal of the condonation petition and the same having been confirmed by this Court, the matter reached finality, hence the question to receive documents will not arise. It is further stated that as per the direction of this Court, the trial court assigned reasons and rejected the application to receive the list of documents in the suit on behalf of the petitioner/2nd defendant. The present revision petition has been filed only to protract the proceedings which is already in the part-heard stage.

4. In the light of the above pleadings, I have heard the learned counsel for the petitioner as well as first respondent.

5. In view of the narration of the facts, it is unnecessary to refer the same once again. It is true that the application filed by the petitioner to condone delay in filing list of documents had been dismissed by the court below and the said order has been confirmed by this Court. However, it is worth-while to refer the order of this Court passed in Review Application Nos. 94 and 95 of 1998 dated 19.11.98. In the penultimate paragraph, this court has observed and directed 'that the lower court should have dealt with the same on merits, after giving opportunity to the respondents. So the orders passed in I.A.Nos. 6986 and 6987 1998 are set aside and the matter is remitted back to the lower court to dispose of the same on merits.' Pursuant to the direction, the court below has passed the impugned order holding that the conduct of the petitioner-2nd defendant in his deliberate failure to produce the document in time cannot be accepted failed to furnish valid reason to

condone the delay? accordingly dismissed the petition to receive the list of documents. Even though the learned counsel for the first respondent would state that in view of the dismissal of the condonation petition and the same has been confirmed by this Court, I am of the view that in view of the direction made by this Court to re-consider the matter I. As. 6986 and 6987 1998 and pass fresh orders, in the light of the fact that the petitioner-2nd defendant is yet to be examined himself as a witness, I am of the view that interest of justice would require that he may be given an opportunity to mark the said document. In this regard, it is useful to refer that even in the written statement in para. 7 the 2nd defendant has referred to the legal notice dated 29.4.77 sent by the plaintiff to him demanding vacant possession of the suit property besides damages for use and occupation. It is clear that the petitioner had made necessary plea in the written statement. No doubt, he could have filed the said notice along with the written statement or within 2 weeks after setting the issues as directed. However, it is stated that inspite of the specific defence taken by him after referring to the notice dated 29.4.77 since the plaintiff did not file written statement, it is stated by the petitioner that the plaintiff had conceded the said issue. Apart from this, even though the trial had commenced long ago, the petitioner-2nd defendant is yet to be examined.

6. Order 13, Rule 1, C.P.C. speak about documentary evidence to be produced at or before the settlement of issues and Rule 2 speaks about effect of non-production of documents.

'Order 13, Rule 1. Documentary evidence to be produced at or before the settlement of issues. (1) the parties or their pleaders shall produce, at or before the settlement of issues, 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 Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced; Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

2. Effect of non-production of documents,- (1) 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 the non-production thereof, and the Court receiving any such evidence shall record the reasons for so doing.

(2) Nothing in sub-rule (1) shall apply to documents, -

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory.'

As per Rule 2, unless good cause is shown to the satisfaction of the Court for non-production of a particular document, the party cannot be permitted to file any document at a later date, after settling of issues. Here, we have to consider whether the petitioner herein had furnished good cause for non-production of documents in time or not. I have already stated that necessary averments had been made in para 7 of the written statement regarding the legal notice of the plaintiff dated 29.4.77. Admittedly, the plaintiff did not file reply statement disputing the said averment made in the written statement. No doubt. P.W.1 was examined and closed his evidence. However, 2nd defendant is yet to be examined, in such a circumstance, I am of the view that the petitioner herein has made out a case for reception of list of documents. Even if the said document is marked through the 2nd defendant, it is open to the first respondent-plaintiff to cross-examine him regarding the said document. The said opportunity is available to him even now.

7. In *Bhikari Charon v. Basanti*, : AIR 1985 Ori 49, a learned single Judge has observed that the object of Rule 1 and Rule 2 of Order 13 is not to penalise the party but to secure a fair trial of the case. Where Order 13, Rule 2 is invoked mala fide, where the move is to cause delay or is vexatious, the cause shown cannot be held to be good cause shown to the satisfaction of the Court. The doors of the discretionary jurisdiction should be closed. Where, however, the document is vital and would assist the court in coming to a decision, the doors should not be shut out.

8. In *S.M. James v. Abdul Khair*, : AIR1961 Pat242 a learned single Judge of Patna High Court after referring to the very same condition, has observed thus:-

'Order 13, Rule 2 makes the satisfactory explanation for non-production at the first hearing a condition precedent for the reception of documents produced out of time. But this Rule 2 must be liberally construed so as to advance the cause of justice.... The Court, therefore, may, in its discretion, admit other documents also in evidence at a subsequent stage of the proceeding, even if they have not been produced in accordance with the requirements of Rule 1.'

9. In *Karam Singh v. Jagta*, , a learned single Judge of the Punjab and Haryana High Court while discussing the very same Rule has observed that where in the suit for possession of land, the defendant, who claimed ownership to the suit land on basis of a registered will and who actually got mutation of the suit land entered in his favour on basis of the will, failed to mention the will in his list of reliance and produced it just before entering on his defence, the refusal to admit the will and proof thereof only because of its late production was erroneous, as the will was not a document which could be manufactured by the defendant a little before it was sought to be produced and more so it was a document having great bearing on the decision of the case. With respect, I am in agreement with the conclusions arrived in all these decisions.

10. In the light of what is stated above, in view of the specific plea in the written statement and of the fact that the 2nd defendant is yet to be examined, I am of the view that Rule 2 in Order 13 must be liberally construed so as to advance the cause of justice. The Court below committed an error in dismissing the petition filed by the petitioner and it failed to invoke the inherent power vested in it in addition to using the discretionary power in deciding the application to receive the document as contemplated by the Code of Civil Procedure. The Court below failed to note that the main object of Order 13, Rule 1 and 2, C.P.C. is to prevent the litigants from manufacturing evidence pending the trial to meet unexpected exigencies. If good cause is shown as provided under Rule 2 to the satisfaction of the Court for non-production of the document at the earliest stage, the court below is expected to receive and give an opportunity to the party.

11. Under these circumstances, the impugned order dated 23.2.1999 passed by the II Additional City Civil Judge. Madras, in I.A.No. 6986 of 1998 in O.S.No. 10219 of 1996 is set aside. Civil Revision Petition is allowed. No costs. C.M.P.No.5169 of 1999 is closed. Inasmuch as the present suit was originally filed before the Original Side of this Court in 1997 and it was transferred to the City Civil Court on the ground of pecuniary jurisdiction, I hereby direct the Court below too dispose of the suit on merits on or before 31.7.2000.

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