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IN THE HIGH COURT OF DELHI AT NEW DELHI

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C.M. (Main) No.95 of 2010 & C.M. Appl. Nos.1453-1454 of 2010

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17.02.2010

JAYRAM BANAN & ANR.

.....Petitioners

Through: Mr. Vijay K. Gupta, Advocate.

Versus

ANAND PRAKASH GUPTA & ORS.

.....Respondents

Through: Mr. P.D. Gupta, Mr. Kamal Gupta and
Mr. Abhishek Gupta, Advocates.

Date of Reserve: 25th January, 2010

Date of Order: February 17, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

J U D G M E N T

1. Issue notice. Mr. P.D. Gupta, Advocate accepts notice on behalf of the respondents. Arguments heard with the consent of the parties for final disposal.

2. By this petition under Article 227 of Constitution of India, the petitioners have assailed an order dated 7th January, 2010 passed by learned Additional District Judge dismissing an application of the petitioners under Order XI Rule 14 read with Section 151 CPC seeking production of a document, namely an alleged partnership deed from defendant No.1.

3. Brief facts relevant for the purpose of deciding this petition are that the petitioners are defendants in the suit filed by the plaintiffs. As per the case of the plaintiffs (respondents herein), the shop in question was purchased by Sh. Anand Prakash Gupta

from previous owner (he was a tenant in the shop). Since he was a handicapped person, he decided to purchase the shop in the name of his three sons who were minor at the time of purchase. The shop was let out to the petitioners, owner of M/s. Sagar Food Home, through its partner Jayram Banan by an Agreement to Lease. Though the agreement was executed on stamp paper but was not registered. In this agreement, the landlord is stated to be M/s. Anand Prakash & Sons. In the opening para of Agreement to Lease, it was stated that the shop was being let out through partners Sh. Anand Prakash Gupta, Sh. Rajesh Gupta, Sh. Jagdish Gupta and Sh. Balram Gupta, all sons of Sh. Anand Prakash Gupta. However, in the later para in Clause I of the lease agreement, it was made clear that M/s. Anand Prakash Gupta & Sons was an HUF and Sh. Anand Prakash Gupta was the *karta* of M/s. Anand Prakash Gupta & Sons and all dealings by petitioners will be made through Sh. Anand Prakash Gupta only. Again, this was stated in Clause 15 that in case of death of Sh. Anand Prakash Gupta, Smt. Kaushalya Devi Gupta, wife of Sh. Anand Prakash Gupta will step into the shoes of Sh. Anand Prakash Gupta as the First Party.

4. Defendant No.1, Sh. Rajesh Gupta, who is one of the sons of Mr. Anand Prakash Gupta without consent or knowledge of the other members of the family sold 1/3rd part of the shop to the petitioners assuming that he was owner of 1/3rd portion of the shop. He executed a registered sale deed in favour of the petitioners and 1/3rd of the property, on the basis of this registered sale deed, was mutated in favour of the petitioners. However, the tenancy of the petitioners in the shop was terminated by *karta* of HUF and a suit for eviction and possession was filed in the year 1994 in which Sh. Rajesh Gupta was made as a co-defendant along with the petitioners. Since Sh. Rajesh Gupta had sold out 1/3rd share in the shop to petitioner, he practically was cooperating with the present petitioners

in litigation. He filed his separate written statement. In the written statement, he specifically took a stand that M/s. Anand Prakash Gupta & Sons was neither a partnership nor an HUF. His stand was that the property in question was jointly owned by three brothers. Sh. Anand Prakash Gupta, that is, father, had nothing to do with the property. In the written statement, he took a specific plea of there being no partnership in existence. During defendant's evidence, Sh. Rajesh Gupta appeared as a witness and he was cross-examined on behalf of the present petitioner, i.e., co-defendant and purchaser of this property from Sh. Rajesh Gupta. Sh. Rajesh Gupta during cross-examination was asked a question if there was a partnership between family members and has he brought the partnership deed and to this question, Sh. Rajesh Gupta answered in positive and stated that there was a partnership deed and he has brought a copy of the partnership deed. The copy of this partnership deed was sought to be placed on record but was objected to by counsel for the plaintiff. The objection was decided by the trial court and the trial court held that the document cannot be placed on record. Against this order of trial court, a review was preferred which was dismissed and against the order of the trial court, a CM(M) petition was preferred which was withdrawn. The counsel at the time of withdrawing the petition wanted that he be given liberty to move an application before the trial court. This liberty was granted. Thereafter, the petitioners moved above application before the trial court and the trial court dismissed the application by the impugned order observing that defendant No.1 in the written statement had categorically stated the M/s. Anand Prakash Gupta & Sons was neither a partnership nor an HUF, therefore, defendant No.1 cannot be allowed to sneak in a copy of alleged partnership during his cross-examination. It was also observed by the trial court that copy sought to be produced, appeared to be forged and fabricated.

5. Learned counsel for the petitioners argued that the trial court has wrongly observed that the copy of the partnership deed appeared to be fabricated and forged. He stated this could have been proved by the other side only after the copy of the document was allowed to be taken on record. While deciding the application, the trial court could not have decided the fate of the document itself. It is also submitted that during cross-examination, the defendant had a right to ask any question and to ask production of any document and once a witness admits existence of a document and produces a copy of the document, the court is bound to take the same on record.

6. Reliance is placed on Order XIII Rule 1 sub-Rule 3A CPC as well as on Order XI Rule 14 CPC. It is submitted that the court could not have disallowed the production of document of partnership deed, though only a copy, on the ground that the document was forged and fabricated. Despite the fact that original was not available, the petitioners would have a right to prove the document by secondary evidence.

7. Learned counsel for the respondents opposed the petition on the ground that defendant no.1 having taken specific stand in the written statement that there was no partnership, he cannot be allowed to place on record, even during cross-examination, a document purportedly to be a copy of the partnership deed. It is submitted that entire effort of the petitioners had been to prolong the trial by one or the other method. The suit was pending since the year 1994. In respect of the same document, this was second round of litigation. In first round of litigation, the petitioners failed and this was second round of litigation. He submitted that the issue now being raised was decided by an earlier order of the trial court. The petition against the earlier order was withdrawn by the

petitioners since the court was going to dismiss the petition. Mere fact that the liberty was granted to file an application does not mean that a new right is accrued to the petitioner to re-agitate the old issue. It is submitted that trial court rightly dismissed the application with cost.

8. Order VIII Rule 1A CPC casts a specific responsibility on a defendant to place on record of the court all documents in his power and possession along with written statement. In case, he does not have certain documents in his power and possession, he has to prepare a list of all those documents which are not in his power and possession and state specifically in whose possession the documents were. Defendant No.1, Sh. Rajesh Gupta, did not even take the stand that M/s. Anand Prakash Gupta & Sons was a partnership firm. He claimed to be owner of 1/3rd of the property. He denied existence of any partnership or HUF. Thus, the question of existence of any partnership deed and its being in possession of defendant No.1 did not arise. Had there been a partnership deed in existence or even a copy had been in existence and in possession of Sh. Rajesh Gupta, he would have mentioned the same in the written statement and would have entered the same in the list of documents and informed the court in whose power and possession this document was. Since it was the case of Sh. Rajesh Gupta, defendant No.1, that there was no partnership, his production of a copy of a partnership deed had to be considered a forgery and a manipulation in collusion with the petitioner.

9. It is not disputed that Sh. Rajesh Gupta is in league with the petitioners and had sold 1/3rd of the property to the petitioners. Even the counsel for Sh. Rajesh Gupta and petitioners, at one point of time, had been the same. I, therefore, consider that the trial court rightly observed that those documents appeared to be forged and fabricated. The sole purpose of law requiring the parties to place on record all the documents with

pleadings is to curb the practice of manufacturing/forging certain documents during proceedings. It is not an unknown fact that looking at the way the trial is going on, some people try to forge documents and sneak them through back door. This is an example as to how the existence of a partnership deed is being tried to be sneaked through back door with the help of petitioners, who were co-defendants, by answering a question by the defendant that there was a partnership. In fact, the evidence of defendant No.1 to the extent that there was a partnership and producing a copy of partnership deed, was beyond pleadings and could not have been allowed. It is settled law that the parties cannot lead evidence beyond their pleadings.

10. The petitioners have placed reliance on 2010 I AD (DELHL) 96; Subhash Chander Vs. Shri Bhagwan Yadav and argued that this court in the said case held that during the course of cross-examination, a document can be put to the party and court can order for production of the document. This judgment is of no help to the petitioners since in this judgment, the court held that Order XIII Rule I (3) CPC permits an element of surprise to the opposite party and a document can be put to the opposite party during his cross-examination. There is no quarrel with this proposition of law. In the present case, it is not the opposite party which has put a document to the witness. In fact, the witness, one of the defendants, had answered a question of co-defendant contrary to his own pleadings, when it is on record that both the witness and the co-defendant were in league with each other. Had the plaintiff put a document to Sh. Rajesh Gupta, this would have been covered under Order VII Rule 14 (4) and under Order XIII Rule 1 (3) CPC. But a defendant, who is in league with the other defendant cannot, during his cross-examination, sneak in a defence which is not taken by the defendant in the written statement nor can place on record a document existence of which was denied in the

written statement by the defendant.

11. The principle of natural justice does not warrant that the parties should be given liberty and freedom to drag on a trial by one or the other method and to keep on prolonging trial by making dubious efforts of re-agitating the same issue again and again. In the present case, the petitioners' first attempt to sneak in this document failed. The petitioners moved an application and made a second attempt to sneak in the document. I consider that the whole effort of the petitioners had been to prolong the trial and to sneak in a defence which was not taken by defendant No.1 and which was specifically denied by defendant No.1, Sh. Rajesh Gupta.

12. The petition is baseless and liable to be dismissed with cost and is hereby dismissed with cost of Rs.25,000/-.

SHIV NARAYAN DHINGRA J.

FEBRUARY 17, 2010
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