

In The High Court Of Judicature At Allahabad

Sitting At Lucknow

Neutral Citation No. – 2024:AHC-LKO:65830

A.F.R.

Reserved

Judgment reserved on 19.09.2024

Judgment Delivered on 23.09.2024

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 3801 of 2024

Petitioner :- Akhtar Khan

Respondent :- Distt. Judge , Pratapgarh And 2 Others

Counsel for Petitioner :- Mohammad Aslam Khan

Counsel for Respondent :- Sanjay Kumar Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Mohd. Arif Khan Senior Advocate assisted by Sri Mohd. Aslam Khan Advocate, the learned counsel for the petitioner and Sri Sanjay Kumar Srivastava Advocate, the learned counsel for the opposite parties.
2. By means of the instant petition filed under Article 227 of the Constitution of India, the petitioner has challenged validity of an order dated 03.05.2024 passed by the Civil Judge (Senior Division)/FTC-II, Pratapgarh in Original Suit No.01 of 2016 titled Akhtar Khan versus Satya Prakash, rejecting the application (Paper No.95 Ga 2) filed by the petitioner under Order XI Rules 12/14 of the Civil Procedure Code (hereinafter referred to as 'C.P.C.'). The petitioner has also challenged validity of a judgment and order dated 30.05.2024 passed by the learned District Judge, Pratapgarh in Civil Miscellaneous Case No.117 of 2024 titled Akhtar Khan versus (1) Poornawati Sharma and (2) Mamta Sharma, whereby the Revision filed by the petitioner against the aforesaid order dated 03.05.2024 has been dismissed at the admission stage.

3. The petitioner has impleaded the District Judge, Pratapgarh and the Civil Judge (Senior Division)/FTC-II, Pratapgarh as opposite parties no.1 and 2 to the petition.
4. In **Udit Narain Singh Malpaharia v. Addl. Member Board of Revenue**: AIR 1963 SC 786, a Bench consisting of four Hon'ble Judges of the Hon'ble Supreme Court had held that in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties.
5. However, in **Savitri Devi vs. District Judge, Gorakhpur**: (1999) 2 SCC 577, a Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court had observed as follows: -

*“14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. **There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.**”*

(Emphasis added)

6. It is relevant to note that the aforesaid observations were made by the Bench consisting of two Hon'ble Judges of the Supreme Court in **Savitri Devi** (Supra) without referring to the earlier decision in **Udit Narain Singh Malpaharia** (Supra) given by a larger Bench consisting of four Hon'ble Judges of the Hon'ble Supreme Court.

7. In **Jogendrasinhji Vijaysinghji vs. State of Gujrat**: (2015) 9 SCC 1, another Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court discussed numerous precedents on the issue, including the judgments in the cases of **Udit Narain Singh Malpaharia** and **Savitri Devi** (Supra) and explained the law as follows: -

*“43. As we notice, the decisions rendered in Hari Vishnu Kamath [AIR 1955 SC 233], Udit Narain Singh [AIR 1963 SC 786] and Savitri Devi [(1999) 2 SCC 577] have to be properly understood. In Hari Vishnu Kamath, the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In Udit Narain Singh, the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In Savitri Devi, the Court took exception to courts and tribunals being made parties. **It is apposite to note here that propositions laid down in each case have to be understood in proper perspective. The civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High Court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite a few examples: the tribunals constituted under the Administrative Tribunals Act, 1985, the Customs, Excise and Service Tax Appellate Tribunal, the Income Tax Appellate Tribunal, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said authority(ies) are different from that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. **There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give*****

another example: in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable.

(Emphasis added)

8. The Civil Judge and the District Judge, who decide a matter, are not entitled to defend their order before this Court and, therefore, applying the law as it stands clarified by the Hon'ble Supreme Court in **Jogendrasinhji Vijaysinghji** (Supra), the Civil Courts should not be impleaded as opposite parties to a petition under Article 227 of the Constitution of India. Therefore, this petition suffers from the defect of mis-joinder of parties.
9. This Court has already heard the submissions of the learned Counsel for the parties and the learned Counsel for the opposite party did not raise the objection of mis-joinder of parties. Had this objection been raised during submissions, the learned Counsel for the petitioner could have taken appropriate steps to cure the defect. In these circumstances, it would not be proper to pass any order adverse to the petition on this ground and the Court proceeds to examine the merits of the matter.
10. The petitioner had earlier filed Second Appeal No.338 of 2016 against Satya Prakash, the deceased father of the private opposite party. The Second Appeal was allowed by means of a judgment and order dated 09.05.2019 and the matter was remanded to the trial court for being decided afresh in light of the observations made in the judgment dated 09.05.2019.
11. The facts of the case, as evident from the aforesaid judgment dated 09.05.2019 are that Satya Prakash – the father and predecessor in interest of the opposite party no. 3, had filed Regular Suit No.1 of 2006 in the Court of Civil Judge (Senior Division), Pratapgarh, for a decree of permanent injunction, pleading that he was the owner in possession of the disputed property on the basis of a Will dated

24.01.1973 executed by Smt. Hardei – the Grand-mother of Satya Prakash. The plaintiff had got his name mutated in respect of the property in dispute as well as in respect of some other property which was also subject matter of the aforesaid Will. He further stated that his brothers Jai Prakash and Chandra Prakash were claiming right over the property in question on the basis of a fictitious Will and they had sold the property in dispute in favour of the defendant – petitioner on the basis of the said fictitious Will. The defendant was attempting to create interference in the possession and rights of the plaintiff.

12. The petitioner - defendant filed his written statement pleading that Smt. Hardei had executed a Will dated 21.03.1952 in favour of Satya Prakash and his unborn brothers. After the Will was executed, Satya Prakash had two other brothers, namely, Jai Prakash and Chandra Prakash and, therefore, both Jai Prakash and Chandra Prakash had 2/3rd right in the property in question, which they had transferred in favour of the defendant through a sale-deed dated 06.09.2005. The defendant also stated that the Will of the plaintiff was fabricated. The first issue framed by the trial court was whether the plaintiff is the owner in possession of the disputed property and the second issue was whether the Will dated 21.03.1952 was validly executed.
13. After filing of the written statement, the defendant did not participate in the proceedings and the matter proceeded ex parte against him. The plaintiff examined himself and three other witnesses and he filed the original Will dated 24.01.1973, a certified copy of the mutation order passed by the Nayab Tahsildar, a copy of the assessment made by the Nagarpalika for water tax alongwith some other documents. The trial Court dismissed the suit by a judgment and decree dated 16.01.2012.
14. The plaintiff filed Regular Civil Appeal No.18 of 2012 under Section 96 C.P.C. before the District Judge, Pratapgarh. The defendant-petitioner filed cross-objections. The first appellate court allowed the appeal and decreed the suit of the plaintiff by means of a judgment and decree dated 08.09.2016, against which Second Appeal No 338 of 2016 was filed in this Court.

15. In the judgment dated 09.05.2019 passed in the aforesaid Second Appeal, this Court has recorded a conclusion that on the date when the evidence was led, the original Will was not available on record of the trial Court. Therefore, the first appellate Court ought to have remanded the matter to the trial Court to enable the plaintiff to prove the original Will and returning its findings thereafter. Accordingly, this Court allowed the appeal and remanded the matter to the trial Court with a direction to permit the parties to the suit to lead evidence and to decide the Suit afresh after giving complete opportunity to the parties.
16. While remanding the matter, this Court had directed the trial Court to complete the entire exercise and decide the suit expeditiously as far as possible, say within a period of eight months from the date a certified copy of this Court's order was placed before the trial court. It was also made clear that no unnecessary adjournment should be granted to the parties and if grant of adjournment is inevitable then it should be visited with appropriate costs.
17. The trial Court could not decide the suit within the time granted by this Court and sought further time to decide the same, which request was accepted by means of an order dated 11.11.2021 and a further period of eight months was granted to the trial Court for complying with the order dated 09.05.2019 and deciding the Suit.
18. After the parties had led their respective evidences, the trial Court started hearing submissions in support of the plaintiff's case on 12.03.2024, which were concluded on 15.03.2024. Thereafter the suit was fixed for hearing submissions of the defendant – petitioner.
19. On 22.03.2024, when the suit was fixed for hearing submissions on behalf of the defendant – petitioner, he filed an application under Order XI Rules 12/14 C.P.C. stating that the original Will dated 21.03.1952 executed by Hardei in favour of Satya Prakash and his unborn brother was lying with the original plaintiff Satya Prakash and after his death, the original Will was with his wife Smt. Poornawati, who should be directed to file the original Will dated 21.03.1952. It was also stated in the application that although some delay had

occurred in filing the application due to inadvertence and ignorance of law, it was necessary for a just decision of the case that the original Will be summoned from the plaintiff no.1/1 Smt. Poornawati Sharma and that the defendant - petitioner should not be deprived of his legal and judicial rights.

20. The opposite party-plaintiff filed objections against the aforesaid application, denying that the original Will dated 21.03.1952 was with the original plaintiff Satya Prakash and after his death, it is with his heirs. The entire evidence had been recorded and the plaintiff's Advocate had concluded his submissions. It was not proper for the defendant to have filed the application at that stage and the application is not maintainable. It has come to light during recording of evidence of PW-1 – Smt. Poornawati Sharma that she got married in the year 1968. She had no knowledge about the Will executed in the year 1952 and she has neither seen it nor has heard about it. There is no evidence to prove that the original Will dated 21.03.1952 is with the plaintiff. Therefore, the application for summoning the Will from the plaintiff was not maintainable. It has also come to light in the evidence that Chandra Prakash acquired knowledge of the Will through his father Lalit Rai in the year 1985-86. Lalit Rai has died. Therefore, this is no occasion for directing the plaintiff to produce the original Will dated 21.03.1952. The defendant had filed the application for filling up the lacuna in his case. The application was liable to be dismissed.
21. The trial Court rejected the application by means of the impugned order dated 03.05.2024 wherein it is recorded that the plaintiff has filed the suit for perpetual injunction and he has to lead evidence to prove his title and possession in respect of the property in dispute claiming that he is the owner and in possession of the property on the basis of a Will dated 24.11.1973. The defendant claims to be owner of 2/3rd share in the property on the basis of a Will dated 21.03.1952 and the burden of proving this fact lies on the defendant. As both the parties have already led their evidences and the submissions on behalf of the plaintiff have already been heard, the application moved when the suit was fixed for hearing submissions on behalf of the defendant,

was merely an attempt to cause undue delay in disposal of the suit. The matter is very old and the High Court has issued a direction for its expeditious disposal. Therefore, there was no ground for directing the plaintiff to produce the document.

22. The petitioner filed a revision against the aforesaid order dated 03.05.2024 which has been dismissed at the admission stage by the impugned order dated 30.05.2024 after recording that the suit is pending since the year 2006. Initially, it had been dismissed by means of an ex parte order dated 16.01.2012. The plaintiff Satya Prakash had challenged the ex parte order dated 16.01.2012 by filing Civil Appeal No.18 of 2012, which was allowed by means of a judgment and order dated 08.09.2016 passed by the learned Additional District Judge, Court No.9, Pratapgarh and a decree of perpetual injunction was passed in favour of the plaintiff. The petitioner filed Second Appeal No. 338 of 2016, which was allowed by a judgment and order dated 09.05.2019 and the matter was remanded to the trial Court for being decided afresh after giving proper opportunity to the parties to lead evidence as well as opportunity of hearing.
23. The revisional Court held that the original plaintiff had filed the suit on the basis of the Will dated 24.01.1973 and he had filed this Will. The burden to prove this Will lies on the plaintiff. The revisionist/defendant/petitioner claims title on the basis of a registered sale-deed dated 06.09.2005 and has filed the same as Paper No. 83 Ga 1/2 to 83 Ga 1/10. The aforesaid sale-deed has been executed by Jai Prakash and Chandra Prakash - sons of Late Lalit Rai, who claimed title on the basis of a Will dated 21.03.1952 executed by Smt. Hardei. The parties have already led their respective evidence and submissions on behalf of plaintiff have already been heard by the trial court. The revisionist/petitioner has filed a certified true copy of the registered Will dated 21.03.1952. The learned Civil Judge has not decided any point finally by the impugned order dated 03.05.2024 and the order does not come within the term 'case decided'. Therefore, the revision was dismissed at the admission stage.

24. Challenging validity of the aforesaid orders, the learned counsel for the petitioner Sri Mohd. Arif Khan Senior Advocate has submitted that the plaintiff had not disclosed existence of the registered Will dated 21.03.1952 in the plaint and the suit was filed on the basis of an unregistered Will dated 21.03.1973 executed by Hardei. The unregistered Will dated 24.01.1973 contains no recital about the earlier Will dated 21.03.1952. In the judgment and order dated 09.05.2019 passed in Second Appeal No.338 of 2016, this Court had directed that the suit will be decided afresh after permitting the parties to the suit to lead the evidence. He has submitted that the certified copy of the Will dated 21.03.1952 is a secondary evidence and it is not admissible in evidence. The petitioner does not have the original Will in his possession and it is in possession of the opposite party and, therefore, the opposite party should be directed to produce the original Will dated 21.03.1952 before the trial Court.
25. The learned Counsel for the petitioner has relied upon the decisions in the cases of **Vinod Kumar Bajaj (Since Deceased) versus Rajendri**, 2018 SCC OnLine All 6489, **Kamalia Brothers and Co. versus State of Gujarat**: AIR 1992 Guj 138 = 1991 SCC OnLine Guj 79, **Rajkishore Prasad versus State of Orissa**: AIR 1979 Ori 96 = 1979 SCC OnLine Ori 35, **Ramlalsao versus Tansingh Lalsingh**: A.I.R. 1952 Nagpur 135 and **Jagmail Singh versus Karamjit Singh**: (2020) 5 SCC 178.
26. Per contra, Sri. Sanjay Kumar Srivastava Advocate, the learned counsel for the opposite party no. 3 has submitted that while remanding the matter by means of the judgment and order dated 09.05.2019 passed in Second Appeal No.338 of 2016, this Court had directed the trial Court to conclude the trial within eight months, but the trial Court could not decide the suit within the time granted by this Court. The suit could not be decided even in the further period of eight months granted by means of the order dated 11.11.2021 passed by this Court, which period expired on 10.07.2022. The petitioner filed the application under Order XI Rules 12/14 C.P.C. on 22.03.2024 i.e. long after even the extended time granted by this

Court for decision of the suit and after the petitioner had availed the opportunity of leading evidence and had also availed the benefit of hearing the submissions advanced on behalf of the plaintiff-opposite parties. The application under Order XI Rules 12/14 C.P.C. was moved at this belated stage to cure the lacuna in the petitioner's case, which had been highlighted during submissions advanced on behalf of the opposite parties. In these circumstances, the trial Court has not committed any error or illegality in rejecting the application under Order XI Rules 12/14 C.P.C. and the revisional Court has not committed any error or illegality in dismissing the revision filed against the aforesaid order.

27. The learned Counsel for the opposite party has relied upon a judgment rendered by a coordinate Bench of this Court in **Vee Excel Drugs & Pharmaceuticals (P) Ltd. versus Union of India**, 2014 SCC OnLine All 248 = (2014) 2 All.L.J. 226, wherein a coordinate Bench of this Court referred to the decision of the Hon'ble Supreme Court in **State of Jharkhand v. Ambay Cements**: (2005) 1 SCC 368, in which the Hon'ble Supreme Court reiterated the well established principle of law that where a statute provides that a particular thing should be done in a particular manner, it should be done in the manner prescribed and not in any other way.
28. Now I proceed to consider the case-laws paced by the learned Counsel for the petitioner. In **Vinod Kumar Bajaj** (Supra), a coordinate Bench of this Court held that: -

“under Order XI, Rule 14 when a document is summoned the Court can immediately proceed with the suit after dealing with it. Summoning of it would not mean that the Court had relied upon it or had admitted it as evidence. It is definitely lamentable that the plaintiff after all these years had moved the application so late in the day. The case, for one reason or the other has lingered for more than 22 years. However, only because the summoning of the documents has now been prayed for at this late stage, the Court cannot say that the document would now not be summoned.

* * *

The observation of the Court that the documents were public documents, and, therefore the plaintiff could have obtained the copies under the RTI also does not hold much water. In fact, had

the Courts summoned the document at the very outset, then a lot of time would have been saved and the suit in all probability would have been decided a year back.”

29. In **Kamalia Brothers and Co. v. State of Gujarat**: AIR 1992 Guj 138 = 1991 SCC OnLine Guj 79, a Single Judge Bench of Gujarat High Court held that: -

“7. ...The requirements of this provision are limited only to the fact that the documents should be or should have been in the possession or power of a party to the suit, and that the same should relate to any matter in question in the suit.”

30. In **Rajkishore Prasad v. State of Orissa**: AIR 1979 Ori 96 = 1979 SCC OnLine Ori 35, a Single Judge Bench of Orissa High Court held that: -

“6. ...in M.L. Sethi v. R.P Kapur [(1972) 2 SCC 427] it has been held that the provisions of Order 11, rule 12, Civil Procedure Code mean that it is sufficient if the documents would be relevant for the purpose of throwing light on the matter in controversy. Every document which will throw any light on the case is a document relating to a matter in dispute in the proceedings, though it might not be admissible in evidence. In other words, a document might be inadmissible in evidence, yet it may contain information which may either directly or indirectly enable the party seeking discovery either to advance his case or damage the adversary's case or which may lead to a trial of enquiry which may have either of these two consequences. It has also been held that generally speaking, a party is entitled to inspection of all documents which do not themselves constitute exclusively the other party's evidence of his case or title. If a party wants inspection of documents in the possession of the opposite party, he cannot inspect them unless the other party produces them. The party wanting inspection must, therefore, call upon the opposite party to produce the document. And how can a party do this unless he knows what documents are in the possession or power of the opposite party? In other words, unless the party seeking discovery knows what are the documents in the possession or custody of the opposite party which would throw light upon the question in controversy, how is it possible for him to ask for discovery of specific documents? The aforesaid principle has been elaborately discussed in The Compagnie Financiere Et Commerciale Du Pacifique v. The Peruvian Guano Company [(1883) 11 Q B. D. 55.]. In that case, it has been observed that “a document relating to any matter in question in action” means that in order to determine whether certain documents are within that description, it is necessary to consider what are the questions in the action. The Court must

look not only at the statement of claim of the plaintiff's case but also at the statement of the defence and the defendant's case.

7. In *Attorney-General v. Gaskil* [(1882) 20 Ch. D. 519] , Cotton L.J. observed:

“The right to discovery remains the same, that is to say, a party has a right to interrogate with a view to obtaining an admission from his opponent of everything which is material and relevant to the issue raised on the pleadings. It was said in argument that it is not discovery where the plaintiff himself already knows the fact. But that is a mere play on the word ‘discovery’. Discovery is not limited to giving the plaintiff a knowledge of that which he does not know, but includes the getting an admission of anything which he is to prove on any issue which is raised between him and the defendant. To show that the pleadings have raised issues' and that therefore interrogatories should not be allowed is another fallacy. The object of the pleadings is to ascertain what issues are. “The object of the interrogatories is not to learn what the issues are but to see whether the party intelligently can obtain an admission from his opponent which makes the burden of proof easier than it otherwise would have been.”

31. In **Ramlalsao versus Tansingh Lalsingh**: A.I.R. 1952 Nagpur 135, a Division Bench of Nagpur High Court held that: -

“The right of a party to deliver interrogatories to his opponent and get answers from him is a valuable one in conducting his cause and he should not lightly be deprived of it. It must be remembered that discovery of facts and documents often tends to shorten litigation and save expenses. The learned Judge had not framed all the issues arising from the pleadings of the parties. If he had framed these issues and permitted the parties to make full use of Orders 11 and 12, Civil Procedure Code, the trial would have been shortened and he would have found ample material to decide the case correctly. Probably, the preliminary decree could have been passed even without going into oral evidence.”

32. There can be no dispute to the propositions of law laid down in the cases cited by the learned Counsel for the parties, but none of the decisions would render any help in decision of this petition, as the factual background of this case gives rise to the questions, which have not been answered in any of the aforesaid judgments.
33. The defendant – petitioner has filed the application under Order XI, Rules 12/14 of C.P.C., which provide as follows: -

“12. Application for discovery of documents.—Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit:

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

* * *

14. Production of documents.—It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.”

34. Although the application is titled as an ‘Application Under Order XI Rule 12/14 C.P.C.’, the only prayer made in it is that the plaintiff no.1/1 Smt. Poornawati Sharma should be directed to file the original Will dated 21.03.1952 executed by Hardei in favour of Satya Prakash and his unborn brother. This prayer is in the nature of a prayer under Order XI Rule 14 and there is no prayer under Order XI Rule 12.
35. Order XI Rule 14 C.P.C. empowers the Court to order the production by any party thereto, of such of the documents in his possession or power, relating to any matter in question in such suit. The requirements for invoking this power are that – (1) the document must be in possession or power of a party to the suit and (2) the document must relate to any matter in question in the suit.
36. The trial Court can order a party to produce any document only when it is at least prima facie satisfied that the document is in possession or power of that party. In the present case, the defendant has not pleaded in the written statement that the Will dated 21.03.1952 allegedly executed by Smt. Hardei in favour of Satya Prakash and his unborn brothers is in possession or power of the plaintiff. PW-1 Smt.

Poornawati Sharma has categorically denied that the original Will dated 21.03.1952 was with the original plaintiff Satya Prakash and after his death, it is with her. PW-1 Smt. Poornawati Sharma has stated that she got married in the year 1968, she had no knowledge about the Will executed in the year 1952 and she has neither seen it nor has heard about it. There is no evidence to prove that the original Will dated 21.03.1952 is with the plaintiff. Therefore, this is no material before the trial Court to come to a prima facie satisfaction that the original Will dated 21.03.1952 is in possession or power of the plaintiff. Therefore, no direction for production of the original Will dated 21.03.1952 can be issued to the plaintiff – opposite party no. 3.

37. There is another aspect of the matter which needs to be addressed. Although Rule 14 empowers the trial Court to summon the document at any stage of the suit, the application has to be filed with reasonable promptitude. In the present case, the suit was filed in the year 2006 and it is being re-tried after the matter having been remanded by this Court through the order dated 09.05.2019 passed in Second Appeal No.338 of 2016, which had directed the trial Court to conclude the trial expeditiously, preferably within a period of eight months. This period was extended by means of an order dated 11.11.2021 and a further period of eight months was granted to the trial Court for complying with the order dated 09.05.2019. The extended period granted by this Court also expired on 10.07.2022, but the trial Court could not decide the suit even in the extended period. The petitioner filed the application under Order XI Rules 12/14 C.P.C. on 22.03.2024 i.e. long after even the extended time granted by this Court for decision of the suit and after he had availed the opportunity of leading evidence and had also availed the benefit of hearing the submissions advanced on behalf of the plaintiff-opposite parties.
38. There is force in the submission of the learned Counsel for the opposite party no. 3 that the application under Order XI Rules 12/14 C.P.C. has been moved at this belated stage to cure the lacuna in the petitioner's case, which has been highlighted during submissions

advanced on behalf of the plaintiff. Allowing the application under Order XI Rules 12/14 C.P.C. in these circumstances would cause prejudice to the rights of the plaintiff – opposite party no. 3. In these circumstances, the trial court has not committed any error or illegality in rejecting the highly belated application under Order XI Rules 12/14 C.P.C. and the revisional court has not committed any error or illegality in dismissing the revision filed against the aforesaid order.

39. Sri. Mohd. Arif Khan Senior Advocate has also submitted that the petitioner has filed a certified copy of the Will dated 21.03.1952, but the certified copy being a secondary evidence, would not be admissible in evidence and, therefore, it is necessary that the opposite party no. 3 be directed to produce the original Will dated 21.03.1952. In support of this submission, Sri. Khan has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Jagmail Singh versus Karamjit Singh**: (2020) 5 SCC 178, wherein the Hon'ble Supreme Court held that: -

“11. A perusal of Section 65 makes it clear that secondary evidence may be given with regard to existence, condition or the contents of a document when the original is shown or appears to be in possession or power against whom the document is sought to be produced, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after notice mentioned in Section 66 such person does not produce it. It is a settled position of law that for secondary evidence to be admitted foundational evidence has to be given being the reasons as to why the original evidence has not been furnished.

** * **

14. It is trite that under the Evidence Act, 1872 facts have to be established by primary evidence and secondary evidence is only an exception to the rule for which foundational facts have to be established to account for the existence of the primary evidence. In H. Siddiqui v. A. Ramalingam [(2011) 4 SCC 240], this Court reiterated that where original documents are not produced without a plausible reason and factual foundation for laying secondary evidence not established it is not permissible for the court to allow a party to adduce secondary evidence.”

40. The aforesaid submission has been made in ignorance of the statutory provision contained in Section 57 of the Registration Act, 1908, which provides as follows: -

“57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.—*(1) Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of Section 62, copies of entries in such books shall be given to all persons applying for such copies.*

(2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

(3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative.

(4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

(5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.”

(Emphasis added)

41. Wills are registered in Book No. 3 and Section 57 (2) provides that after the death of the testator, any person can obtain a certified copy of any document registered in Book No. 3. The petitioner has already obtained a certified copy of the Will and has filed the same on record of the suit. Section 57 (5) of the Registration Act provides that a certified copy of the Will is admissible in evidence. Therefore, the self harming submission of the learned Counsel for the petitioner that the certified copy of the Will filed by the petitioner is not admissible, is not correct. However, admissibility of a document is distinct and different from the proof of the document.
42. In view of the foregoing discussion, I find no force in any of the submissions advanced by the learned Senior Advocate appearing for

the petitioner. There is no illegality in the order dated 03.05.2024 passed by the Civil Judge (Senior Division)/FTC-II, Pratapgarh in Original Suit No.01 of 2016, rejecting the application filed by the petitioner under Order XI Rules 12/14 C.P.C., or in the judgment and order dated 30.05.2024 passed by learned District Judge, Pratapgarh in Civil Miscellaneous Case No.117 of 2024, whereby the Revision filed by the petitioner against the aforesaid order dated 03.05.2024 has been dismissed at the admission stage.

43. The petition lacks merits and the same is **dismissed**. The parties shall bear their own costs of the instant litigation.

(Subhash Vidyarthi J)

Order Date: 23.09.2024