

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 09th September 2015
Judgment Delivered on: 05th October 2015

+ **FAO(OS) 359/2015**

ARUN VIJ

..... APPELLANT

VERSUS

TRILOK NATH PASRICHA

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant : Mr Sanjay Agnihotri, Advocate with appellant in person.

For the Respondent : Mr K. K. Sharma, Sr Advocate with Mr Rajiv Bakshi, Ms Bhanita Patowary, Mr Ketan and Mr Ayush, Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. This appeal impugns order dated 27.05.2015, whereby the application filed by the appellant (the defendant in the suit) under Order 11 Rule 14 and Order 18 Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) seeking a direction to the respondent (plaintiff in the suit) to produce (i) complaint to the Commissioner of Police, Delhi Police dated

13.03.2004 alongwith proof of dispatch/delivery/receipt and (ii) relinquishment deeds dated 10.10.2003 and 16.08.2003 has been dismissed.

2. The contention of the defendant is that the said documents have been relied upon by the plaintiff in the plaint and are necessary for the purposes of determining the disputes between the parties. It is contended that the documents relate to the matter in question in the suit and as such are required to be produced by the plaintiff/respondent herein. It is contended that the documents are in the power and possession of the respondent.

3. The learned single Judge has dismissed the application of the appellant noticing the contention of the respondent that the respondent/plaintiff did not rely upon the said documents in the plaint, further no issue had been framed on the said documents, and as such, there was no question of producing the same. It has been noticed by the learned single judge that no evidence has been led by the respondent/plaintiff on the said documents. The cross-examination of the respondent/plaintiff's witnesses is already over and the witnesses have been cross-examined at length on behalf of the appellant/defendant. The case is now at the stage of the appellant/defendant's evidence and as such, the court has found that there was no question for producing the said documents.

4. Learned single Judge has noted the contention of the counsel for the respondent that the Delhi Police has already stated that the record of the said police complaint has been destroyed as per Rules, and the respondent's witness has deposed that no copy of the said complaint was available with them. In these circumstances, the learned single Judge has held that the documents cannot be produced. The application has accordingly been dismissed.

5. The subject application had been filed by the appellant under order 11 rule 14 read with order 18 rule 17 of CPC.

6. Order 11 Rule 14 CPC lays down as under:-

***“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.”*

7. Order 18 Rule 17 CPC lays down as under:-

***“17. Court may recall and examine witness.-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”*

8. Order 11 Rule 14 CPC lays down that it is lawful for the Court

at any time to order production by any party of such documents in his power or possession relating to any matter in question in such suit as the Court shall think right. What is relevant under Order 11 Rule 14 CPC is that the documents must relate to any matter in question in the suit. Order 18 Rule 17 CPC empowers the court to recall any witness who has already deposed and put such questions as the court may deem fit to such witness.

9. The purpose of the appellant behind seeking recall of the witness is for cross-examination of the said witness on the documents, the production of which has been sought. So prior to recall of any witness under Order 18 Rule 17 CPC, what is to be determined is whether the respondent is liable to be directed to produce the sought for documents. For that, it is necessary to determine whether the said documents relate to any matter in question in the present suit.

10. The suit is for possession filed by the respondent seeking possession from the appellant. Issue No. 4 is whether the plaintiff is owner of the property and is entitled to possession thereof from the defendant? The onus of the said issue has been placed on the plaintiff i.e. the respondent herein. The evidence of the respondent is already over. The witnesses of the respondent have already been cross-examined on behalf of the appellant. Perusal of the plaint does not show that the respondent has specifically referred to either the two relinquishment deeds or the police complaint. It may be noticed that

the certified copies of the relinquishment deeds and copy of the police complaint are also on record, having been produced by the appellant. The subject documents have not been relied upon by the respondent/plaintiff. The certified copy of the said documents, in any case, has already been filed on record by the respondent. None of the issues framed in the present suit relate in any manner to the said documents. The respondent/plaintiff has not proved any of the said documents in discharge of the onus placed upon him. It cannot be said that the documents relate to any matter in question in the present suit.

11. Further, with regard to ownership of the property, as noticed above, the onus is on the respondent. The respondent has already led its evidence. The witnesses of the respondent have been cross-examined on behalf of the appellant at length. It is also noticed that the respondent has not led any evidence in respect of the said documents. The witness of the respondent was cross-examined on behalf of the appellant based on the copies of the subject documents that are on record.

12. Since the documents in our view do not relate to any matter in question in the present suit, the respondent cannot be directed to produce the same under Order 11 Rule 14 CPC.

13. Since the subject documents do not relate to any matter in question in the suit and are not liable to be produced under Order 11

Rule 14 CPC, so there is no question of recall of any witness of the respondent under Order 18 Rule 17 CPC.

14. In our view, there is no infirmity in the order passed by the learned single Judge dismissing the application of the appellant.

15. In view of the above, we find no merit in the appeal. The appeal is accordingly dismissed leaving the parties to bear their own costs.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

October 05, 2015
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