

22.08.2023  
Court No. 19  
Item No.14  
CP

C.O. 1019 of 2020

Sk. Manik & ors.

Vs.

Sk. Mani & anr.

Mr. Arup Banerjee

...for the petitioners.

Mr. Sandip Ray

Mr. Tirthankar Dhali

.....for the opposite parties.

The order impugned before this court is an order dated January 28, 2020, passed by the learned Civil Judge (Senior Division), Burdwan in Title Suit No. 232 of 2013. The said order was passed pursuant to a direction of this court dated August 8, 2019, passed in C.O. 2593 of 2019. C.O. 2593 of 2019 was filed challenging rejection of the two applications filed by the plaintiffs/petitioners in a suit for partition. The plaintiffs had prayed for reconstruction of the records on the basis of the copy of the written statement originally served upon the plaintiffs and for an enquiry to be held in respect of an allegation of tampering of the written statement, which was a part of the records in the trial court.

According to the petitioners, the written statement served upon the petitioners did not tally with the written statement which was found in the

records. Various statements were deleted amounting to withdrawal of admissions. It is also submitted that the affidavit-in-chief filed by the defendant no. 1, tallied with the untampered version of the written statement which was served upon the plaintiffs, but differed from the written statement which was available with the records. Pages 39, 41, 42, 43 and 44 of the earlier revisional application which were parts of the written statement supplied to the petitioner compared with the pages 55, 57, 58, 59 and 60 of the said revisional application which were part of the written statement available with the records of the court were pointed out to the coordinate bench.

The Coordinate Bench of this court held, that the version of the defendants that the correction was made in the presence of the sheristadar before the written statement was filed, but inadvertently, the uncorrected version was served upon the plaintiffs, could be a plausible explanation. However, there would certain indicators which would strongly suggest interpolations. Thus an enquiry into the matter would be justified.

The affidavit-in-chief must have been filed after the written statement, but the averments in the affidavit-in-chief were in tune with the copy of the

written statement served upon the petitioners/plaintiffs.

His Lordship also noted that the initials of the sheristadar in the subsequently corrected version, did not match with the initials of the sheristadar in the other pages of the uncorrected version of the written statement. Moreover initials were made in red ink. Hence, His Lordship was of the view that the trial court was wrong in refusing to exercise jurisdiction vested in it by law by holding an enquiry when such serious allegations were made. The revisional application was disposed of with the following direction:

‘Hence, the revisional application bearing C.O. 2593 of 2019 is disposed of by setting aside the portion of the impugned order, whereby the petitioners’ application for holding an enquiry into the matter was dismissed. The trial court is directed to conduct an enquiry at the earliest into the question of alleged tampering of written statement raised by the plaintiffs/petitioners in connection with Title Suit No. 232 of 2013, upon taking all necessary steps and receiving evidence, if it deems fit, for the purpose of arriving at a just conclusion on such enquiry. The enquiry shall be completed by the trial court within two months from the date of communication of this order to the court below.’

Once again, the learned court below took up the matter and heard both the parties. Upon conclusion of hearing, the order impugned was passed with certain observations of the learned Trial

Judge. Such order has been challenged in this revisional application.

It appears that the learned court below went into the merits of the suit and the statements made in the written statement filed by the defendant no. 1, without embarking into an enquiry. His Lordship had directed that the enquiry could also involve recording of evidence, if the learned trial court deemed it fit. The learned court below, misinterpreted the order of His Lordship.

The learned court, upon considering the order of the High Court in C.O. 2593 of 2019 held that the decision in Iqbal Singh Marwah and anr. vs. Meenakshi Marwah and anr., reported in (2005) 4 SCC 370, could be pressed into service. The said decision dealt with the question whether the bar contained in Section 195(1)(b)(ii) would apply where forgery of a document was alleged to be committed and the documents were produced in court. The learned court held that any offence committed with respect to a document, at a time prior to its production or being tendered in evidence in court, could not strictly speaking be treated as evidence affecting the administration of justice. Relying on Section 340 of the Code of Criminal Procedure read with Section 195(1)(b)(ii), the court held that the possible interpretation was that such a document if

produced in court or tendered in evidence, the complaint should be raised by the court and not by a party, after six years from the filing of the written statement.

The learned court held that at a quick glance some of the initials made in red ink by the sheristadar, would not automatically give rise to a presumption of forgery.

Moreover, without any expert opinion and in the absence of the predecessor in office, the court was not in a position to delve deeper into such an enquiry. The moot question around which the suit revolved was whether the plaintiff nos. 1, 2 and 3 and the defendant no. 2 were the children of Parnisa Bibi or whether Parnisa Bibi was married to Sk. Sahid. These were the primary issues to be decided. Thus, the court was not required to make any further enquiry.

These observations of the learned court, in my opinion, go against the direction passed by the learned Coordinate Bench of this court. His Lordship upon appreciation of each and every discrepancy, arrived at a conclusion that an enquiry with regard to the allegation made by the plaintiffs about tampering of the written statement after the suit had progressed and after the affidavit-in-chief had been filed, were, *prima facie*, evident from the records.

There were various anomalies which persuaded His Lordship to direct the learned court below to make an enquiry with regard to the allegation and even record evidence in such regard.

The statements of the sheristadar and other staff who might have been present in the court could be recorded. The clerk who allegedly served the uncorrected version upon the plaintiffs should have also been questioned, in order to arrive at a factual finding as to whether there was any situation at all which established the allegation of tampering with the court's records.

The order impugned is thus, set aside. A detailed enquiry as to what transpired between the sheristadar and the defendant no. 1 when the records were in the custody of the court, was required to be held. If necessary, the documents could be sent to the Questioned Documents Department for further opinion.

The revisional application is allowed.

The learned court below is directed to follow the direction of His Lordship and decide the question of tampering of records first, before proceeding with the suit. Upon the finding to be arrived at by making a detailed enquiry, the learned court shall take necessary steps, in accordance with law.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**