



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.01 OF 2024

BHAGIRATH S/O JAYNARAYAN BOOB
VS
MAHESH S/O.BHAGWANDAS BOOB AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Jugalkishor Gilda, Sr. Advocate a/b Shri A.J. Gilda, Advocate for the
Petitioner

Shri J.J. Chandurkar, Advocate for the respondent Nos.1 and 2

CORAM : ANIL S. KILOR, J.

DATE : 02.05.2024

1. Heard. Accords
2. The order below Exh.13 dated 09.11.2023, rejecting the application Order 11 Rule 12 read with Rule 14 of the Code of Civil Procedure is under challenge in this writ petition.
3. I have heard the learned counsel for the parties.
4. Shri Gilda, learned Senior Advocate, appearing on behalf of the petitioner, has drawn attention to the pleadings made in the plaint, more particularly, in paragraph 3, to the effect that the plaintiffs are the owners and in possession of the suit property. It is therefore, submitted that since no document is filed by the plaintiffs along with the plaint, as regards their title, the application Exh.13 under Order 11 Rule 12 read with Rule 14 of the Code of Civil Procedure, came to be filed.

5. It is submitted that the Hon'ble Supreme Court of India and the various High Courts, have held that, 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 trail of enquiry which may have either of these two consequences, the Court has discretion for directing the parties under Order 11 Rule 12 for discovering such documents on oath. For this purpose, he has placed reliance on the judgment of the Hon'ble Supreme Court of India, in the case of *Shri M. L. Sethi Vs. Shri R. P. Kapur*¹, the judgment of the Coordinate Bench of this Court in the case of *Indian Overseas Bank Vs. Shreekrishna Woollen Mills Pvt. Ltd. and others*², the judgment of the High Court of Delhi, the judgment of the High Court of Delhi, in the case of *Raj Sarogi vs. American Express (India) Pvt. Ltd.*³ and the judgment of the High Court of Rajasthan, in the case of *Shambhu Lal Sharma Vs. Rajasthan State Road Transport Corporation & Others*⁴.

6. On the other hand, the learned counsel for the respondents, submits that since there is no mention of any documents as a basis to claim ownership, such application is not permissible. He therefore, submits that the learned trial Court has rightly rejected the present application. Accordingly, he prayed for dismissal of the present writ petition.

1 AIR 1972 SC 2379

2 1987 SCC OnLine Bom 310

3 2001 SCC OnLine Del 481

4 1992 SCC OnLine Raj 104

7. In light of the rival contentions of the parties, I have perused the record and the impugned order.

8. The Hon'ble Supreme court of India, in the case of *Shri M. L. Sethi* (supra), has observed thus:

“6. ... Nor do we think that the High Court was right in holding that the documents ordered to be discovered were not relevant to the enquiry. The documents sought to be discovered need not be admissible in evidence in the enquiry or proceedings. 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 trail of enquiry which may have either of these two consequences. The word 'document' in this context includes anything that is written or printed, no matter what the material may be upon which the writing or printing is inserted or imprinted. We think that the documents of which the discovery was sought, would throw light on the means of the respondent to pay court fee and hence relevant.”
(emphasis supplied)

9. It is beneficial to refer to the judgment of the High Court of Delhi, in the case of *Raj Sarogi* (supra), which reads thus:

“6. The appellant filed the application under two separate provision of law, namely, Rule 12 of Order 11 CPC for discovery of documents and Rule 14 of Order 11 CPC for production of documents. Rule 12 and Rule 14 of Order 11 CPC are independent of each other. The object of Rule 12 of the Code is two fold: (a) to secure as far as possible that all material documents are disclosed by putting the opposite party on oath as to the documents in his possession or power with consequent penalties attach to a false oath; and (b) to

put an end to what might otherwise led to a protracted enquiry as to the material documents actually in possession or under the control of the opposite party. As and when the application under Rule 12 of Order 11 CPC is tiled seeking discovery of documents, the Court is required to exercise discretion, as envisaged in the said Rule, which does not alter the principle relating to the production of documents but gives the Court a discretion to refuse to direct discovery of documents when there is no reasonable prospects of its being of any use or to limit the nature and extent of the discovery. The discretion undoubtedly vested in the Court must be exercised judicially to further the primary object of the Rules for production and discovery of documents.

7. The impugned order on the face of it suggests that learned Single Judge did not consider the question that whether the discovery was or was not necessary at that stage of the suit or whether the documents, the production of which was sought were or were not relevant. Before directing discovery of documents, the Court is required to satisfy itself that whether the documents are relevant for the purpose of disposing of the suit or not. A party cannot be permitted to have a roving enquiry to extract information which may or may not be relevant. Learned Single Judge did not satisfy himself that whether or not the documents were relevant. Learned Single Judge appears to have been swayed merely by one reason that it was not a bona fide act on the part of the appellant in moving the application, which in our view, cannot be a sole ground on which such an application seeking discovery of documents be dismissed. Learned Single Judge was expected to apply his mind to the facts of the case and the averments made in the application. He was also expected to disclose his mind by stating in the order on what valid grounds the plaintiff/appellant would not be entitled to seek the direction, prayed for in the application. No reason is at all disclosed in the impugned order implying that the discretion has not been exercised properly with reference to the averments made in the application. We have gone through the contents of the application and are of the view that it is a fit case where the application deserves to be heard and decided afresh within the scope of the two different provisions of the Rules.” (emphasis supplied)

10. The Judgment of the Coordinate Bench of this Court, in the case of *Indian Overseas Bank* (supra), which read thus:

“8. Order 11 of the Civil P.C. deals with discovery and inspection. Under Order 11 Rule 12 there is a provision for discovery of documents by filing an affidavit of documents. Ordinarily under the scheme of Order 11, affidavits of documents have to be filed after the pleadings are completed. Inspection is granted of documents which are disclosed in the affidavit of documents thereafter. Under Order 11 Rule 15, however, a party to a suit may obtain production and inspection of documents referred to in the pleadings or affidavits of the other side before the pleadings are complete. Apart from this provision, a party cannot normally ask for production for inspection of documents at a stage prior to the filing of affidavits of documents. (See Halsbury, 4th edn. Vol. 13, para 1). Under Order 11 Rule 14, however, the Court has the discretion to order production of documents at any stage. Order 11 Rule 14 reads thus :

Rule 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.

Order 11 Rule 14 does not prescribe any particular stage at which such production of documents can be ordered by the court. It can be done at any time during the pendency of the suit. The production of documents under Order 11 Rule 14, however, is at the discretion of the court. Under the normal scheme of production of documents at the instance of parties, documents are produced and inspection is given after the pleadings are concluded. Under Order 11 Rule 14, however, the court may in its discretion at any stage direct the documents relating to any matter in question in such suit to be produced. It is not mandatory for the court to direct production of such documents whenever asked for.

9. *In the case of Vishnu Yeshawant Wagh v. New York Life Insurance Co. reported in (1905) 7 Bom LR 709, which was under the old Section 130 of the Civil P.C. of 1882, the Court said that the Court has discretion to order production or not under the provisions of old Section 130 which is in pari materia with Order 11 Rule 14 of the present Civil P.C. The Court observed, "It seems to me pretty clear that although in regard to certain documents, when they are absolutely privileged the court has no discretion whatever, whether it will order production, or not, yet under Section 130 of the Code, in regard to other documents the Court does possess the discretion and the discretion is to be exercised according to the practice of this Court."*

10. *Similarly, in the case of Ram Hari De v. Niranjan Krishna Das and Co. reported in (1946) 50 Cal WN 845 the Court discussed the provisions of Order 11 Rule 14 of the present-Civil P.C. It observed that an order for production of documents under Order 11 Rule 14 is not dependent on a prior order for discovery under Rule 12. The two rules relate to different matters. It has observed that even if a party admits that certain documents are in his possession or power and it appears that they relate to the matters in dispute, and no privilege is claimed, the Court is not bound to make an order for their production under Order 11 Rule 14. It stated that the important words in Order 11 Rule 14 that determine the power of the Court are the words "it shall be lawful".*

Prima facie these words import discretion and they have been judicially construed as discretionary unless there be anything in the subject-matter to which they are applied or in any other part of the statute to show that they are meant to be imperative." (emphasis supplied)

11. The judgment of the Rajasthan High Court in the case of *Shambhu Lal Sharma* (supra), which reads thus:

"9. In Rajkishor Prasad v. State of Orissa (AIR 1979 Orissa 96), it has been held:-

"It is sufficient to for discovery, if the document 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 document relating to a matter is dispute, in the

proceeding though it might not be admissible in evidence in other words a document might be admissible 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 trial of enquiry which may have either or these two consequences.” (emphasis supplied)

12. From the above referred observations, it is evident that as and when the application under Order 11 Rule 12 of CPC is filed, seeking discovery of the documents, the Court is required to exercise discretion, as envisaged in the said Rule, which does not alter the principle relating to the production of documents but gives the Court a discretion to refuse to direct discovery of documents when there is no reasonable prospects of its being of any use or to limit the nature and extent of the discovery. It is further clear from the above referred observations that the discretion undoubtedly vested in the Court must be exercised judicially to further the primary object of the Rules for production and discovery of documents. Hence, it is expected that the trial Court shall disclose its mind by stating in the order, on what valid grounds, the party would not be entitled to seek protection, prayed for in the application.

13. In the teeth of the above referred well settled principles of law, I revert back to the facts of the present case.

14. The learned trial Court, while rejecting the application Exh.13, has recorded the reasons in paragraph 4 of the impugned order, which reads thus:

“4) Gone through the record of the case. On perusal of pleadings of both the parties, it seems that the plaintiffs have

came up with the theory that the alleged partition deed dated 01.04.2019 is void ab initio and the defendant has acquired no right, title or interest on the basis of said documents. Whereas, the defendant has contended that the suit properties was originally owned by his mother and father of plaintiff No.1. As, the plaintiffs are seeking declaration of their ownership the burden is on them to prove the same and on their failure to discharged the aforesaid burden, they will not be entitled for the relief sought. Therefore, the case law relied upon by the learned advocate of the defendant i.e. 1] The judgment of Hon'ble Apex Court in the case of Union of India & others Vs. Vasavi Co-operative Housing Society Ltd. & others (2014) 2 SCC 269 and in 2] The judgment of the Hon'ble Apex Court in the case of City Municipal Council, Bhalki Vs. Gurappa MLJ 2016 (5) 1 are squarely applicable to the case in hand. Considering the above settled position, on plaintiffs failure to established their title they will be non-suited. Hence, at this stage of the suit it is not necessary to issue direction to the plaintiff to discover on oath and place on record the documents of title if any in respect of the suit property by or under which the plaintiffs are alleging their ownership. ...”

15. From the above referred findings recorded by the learned trial Court, it is evident that the learned trial Court has not recorded and disclosed any reason for not exercising the discretion under Order 11 Rule 12 of CPC. In the circumstances, having held that the Court has to disclose its mind by stating in the order on what valid grounds, the party would not be entitled to seek production, prayed in the application, I am of the opinion that the matter needs to be remanded back to the learned trial Court for deciding the application Exh.13 afresh, after hearing both the parties and considering the above referred observations made by this Court. Accordingly, I pass the following order:

- (i) The writ petition is **partly allowed**.

(ii) The impugned order below Exh.13 dated 09.11.2023 passed by 12th Civil Judge Senior Division, Amravati in Special Civil Suit No.418 of 2023, is hereby quashed and set aside.

(iii) The application Exh.13 is remanded back to the learned trial Court to decide the same afresh, after hearing both the parties.

The writ petition is disposed of. No order as to cost.

[ANIL S. KILOR, J.]