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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on: 12th February, 2024**
Judgment pronounced on: 12th March, 2024

+ C.R.P. 217/2023 & CM APPL. 41227/2023

RAKESH SACHDEVA Petitioner
Through: Mr. G.L. Verma, Adv.

versus

RAJESH SACHDEVA Respondent
Through: Mr. Vivek Singh and Ms. Kirti
Mewar, Advs. alongwith
respondent in person

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner, who is the defendant in the suit instituted by the respondent/ plaintiff, is assailing the impugned order dated 02.06.2023, whereby the learned ADJ-04, South District, Saket Courts, New Delhi, has disallowed the request of the petitioner/defendant to cross-examine two witnesses for the plaintiff. The two witnesses sought to be examined were: Record Clerk/Officer concerned from the Sub-Registrar Office, Noida-II, Gautam Budh Nagar, Uttar Pradesh, to produce the SPA registered at page No. 192 in Book No. IV Vol. 21, Registration No. 889 dated 14.04.1983 and SPA at page No. 193 in Book No. IV Vol. 21, Registration No. 890 dated 14.04.1983, besides Record Clerk/Officer concerned from Sub-Registrar-I, Kashmiri Gate, Delhi, to produce 'receipt registered' *vide*



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Registration No. 2946, Addl. Book No. IV, Vol. 928; page 174, registered on 14.04.1983.

2. Suffice to state that the parties are the real brothers and the bone of contention is the suit property, over which the respondent/plaintiff lays his claim as the owner thereof, while the petitioner/respondent No.1 agitates that all the documents executed in favour of the respondent/plaintiff are forged and fabricated.

3. During the course of the arguments, it was pointed out that the evidence of both the parties have since been completed and the said two witnesses have been ordered to be summoned at the instance of the respondent/plaintiff at the stage of rebuttal of evidence.

ANALYSIS AND DECISION:

4. Having heard the learned counsel for the parties and upon perusal of the record, it would be apposite to reproduce the operative portion of the impugned order passed by the learned ADJ, which reads as under:-

“Arguments heard. Record perused.

This Court has relied upon the judgment passed by Hon'ble High Court of Calcutta: titled as ***"Kotulpur Farmers' Service Vs. Sayera Bibi and Others, C.O. No.2515/2019"*** wherein it is held in para 43 which is as under:

43. It is found from the records that the defendant no.18 was called only to produce a document and not as a witness, as is evident from "the connected application of the plaintiff himself. As such, Section 139 of "the 1872 Act squarely applies and the defendant no.18 cannot be treated to be a witness for the purpose of cross examination. Hence, the trial court rightly rejected the prayer of the petitioner for cross examination of defendant no.18 .

This court has also relied upon the judgment passed by Hon'ble High Court of Punjab and Haryana titled as ***"Rakesh Jain Vs. Central Bureau of investigation, CRR 1403-2022"*** wherein it is held as under:



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.... Since "this witness has not prepared these documents and has only collected the same, he cannot be attributed any personal knowledge, for which his cross-examination by way of question and answer format is allowed.

Even otherwise, as per Section 139 of The Indian Evidence Act; the witness cannot be permitted to be cross-examined with regard to contents of documents exhibited during the course of trial and the same is to be seen by the trial Court at the time of final adjudication.

Record shows that plaintiff in his application for summoning of witnesses prayed to summon witnesses i.e. Sh. Sarvesh Kumar and Sh. Rajender Singh to produce documents i.e. SPA registered at Page no.193 in Book No.IV, Vol.21, Registration No.890, dated 14.04.1983, SPA registered at Page no.192 in Book No.IV, Vol. 21, Registration No.889 dated 14.04.1983 and Receipt registered vide Registration No.2946, Addl. Book No.IV, Vol. 928, Page 174 registered on 14.04.1983 respectively.

It is relevant to reproduce here Section 139 of the Indian Evidence Act which is as under:

139. Cross-examination of person called to produce a document

A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross examined unless and until he is called as a witness.

In view of the aforesaid discussion as well as in the light of the aforesaid judgments, this Court is of the considered view that cross-examination of aforesaid witnesses is not permissible under Section 139 of Indian Evidence Act, 1872 as plaintiff summoned them to produce documents only.”

5. On a careful perusal of the aforesaid order, unhesitatingly the present revision petition is devoid of any merits. There is no legal necessity to allow the petitioner to cross-examine the official witnesses who have merely produced certain documents. There is no gainsaying that although the right to cross-examination is sacrosanct in law, it can only be made available where the witness deposes about certain ‘facts in issue’. As per Section 3 of the Indian Evidence Act, 1872, the expression “facts in issue” means and includes-

“ any fact from which, either by itself or in connection with other



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facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding, necessarily follows.

Explanation.—Whenever, under the provisions of the law for the time being in force relating to Civil Procedure¹⁴, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.”

6. Thus, the deposition of the facts would be in regard to *any thing, state of things or relation of things, capable of being perceived by the senses*. At the cost of reiteration, the official witnesses in this case have been summoned to produce certain documents from the public records and neither they have any personal knowledge as to the identity of the parties to the document nor they are competent witnesses to depose anything about the validity or authenticity of such documents except for the fact that they are found in the public records and produced in terms of the directions of the Court.

7. It is also pertinent to mention here that as per Section 146 of the Indian Evidence Act, 1872, the questions that are allowed to be lawful in the cross-examination are such which tend to *test the veracity of a witness apart from discovering who is he and what is his position in life*. Further, lawful questions could be anything in order to *shake his credit, or by injuring his character*.

8. In the instant matter, there is no issue about testing the veracity and/or position of the witnesses in their official hierarchy and/or for that matter, injuring their character in any manner or creditworthiness of their deposition. There is no deposition at all as to any fact except that the documents exist in public records and are produced as such.

9. Much was urged by learned counsel for the petitioner that the



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documents marked exhibits in the recorded testimony of the witnesses would raise an inference that the document stands proved as per the law. The plea is noted only to be rejected as it is well ordained in law that mere marking of “Court’s exhibits” on the document cannot imply that the document stands proved or would be admissible in evidence. Merely because the documents have been produced and tendered in evidence of such witnesses by itself does not imply that the document stands proved or substantiated. Needless to state that eventually, it would be in the domain of the learned Trial Court to determine whether or not such documents, can at all, be looked into and/or be relied upon for determination of any matter in issue as per the law.

10. In view of the foregoing discussion, I find that there is no merit in the present revision petition. The impugned order passed by learned Trial Court dated 02.06.2023 does not suffer from any patent illegality, perversity or incorrect approach in law.

11. Hence the present revision petition is dismissed.

12. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 12, 2024

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