HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12288/2022

Anil Kumar Purohit S/o Late Sh. Radha Kishan Purohit, Aged About 62 Years, R/o 3/102, Jawahar Nagar, Jaipur (Raj.)

----Petitioner/ Defendant No.2

Versus

1. Ashok Kumar Purohit S/o Late Sh. Radha Kishan Purohit, Aged About 66 Years, R/o 3/102, Jawahar Nagar, Jaipur, Presently Residing At B-36, Anita Colony, Bajaj Nagar Jaipur (Raj.) (As Per Title Of Plaint)
2. Radha Kishan (Radha Krishan) Purohit S/o Late Sh. Bhura Maj Ji Purohit, Aged About 84 Years, R/o 3/102, Jawahar Nagar, Jaipur, Presently Residing At B-36, Anita Colony, Bajaj Nagar Jaipur (Raj.) (Deceased)- Represented By-

2/1 Smt. Shanti Devi Purohit W/o Late Sh. Radha Kishan Purohit, R/o 3/102, Jawahar Nagar, Jaipur, Presently Residing At B-36, Anita Colony, Bajaj Nagar Jaipur (Raj.)

3. Smt. Asha Purohit W/o Sh. Satya Narayan Purohit D/o Late Sh. Radha Kishan Purohit, R/o 10/897, Malviya Nagar, Jaipur.
4. Aruna Pareek W/o Sh. Ashok Pareek D/o Sh. Radha Kishan Purohit, R/o F-12, Vinay Path, Todarmal Marg, Banipark, Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Mr. L. L. Gupta, Mr. Lakshya Kumar Sharma
For Respondent(s)	:	Mr. R. K. Mathur Sr. Adv. asst. by Mr. Ayush Goyal, Mr. Kapil Gupta & Mr. Mohd. Adil

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

19/09/2024

REPORTABLE

1. With the consent of learned counsel for both parties, the writ petition has been heard finally on merits.

2. Instant writ petition under Article 227 of the Constitution of India has been filed by the petitioner-defendant No.2, feeling

aggrieved by the order dated 09.05.2022 passed by the Additional District Judge No.4, Jaipur District in Civil Suit No.69/2018, dismissing his application under Order VIII Rule 1(3) CPC and declining to take the original bank passbooks and bank statement of defendant No.1- Radha Kishan Purohit (now deceased) and of defendant No.2- Anil Kumar Purohit.

3. Brief facts of the case as revealed from the record are that the respondent No.1-plaintiff has filed a civil suit for partition and permanent injunction in respect of three immovable properties described in Para No.2 of the plaint. The suit has been resisted by the petitioner-defendant No.2 and in the written statements, a plea has been raised that an another immovable property Plot No. B-36, Anita Colony, Bajaj Nagar, Jaipur is also joint property of family, which has not been included by the plaintiff in the suit of partition and a counter claim has made in the written statement. In respect of this property, the defendant No.2 has pleaded that the property was purchased in the name of plaintiff and he was funded by father- defendant No.1-Radha Kishan Purohit (now deceased) as also by defendant No.2. As per the respective pleadings of parties, issues have been framed and suit is at the stage of recording plaintiff's evidence.

It is noteworthy that after filing of the present civil suit, on defendant No.1-Radha Kishan Purohit, who is father of plaintiff-defendant No.2, has passed away on 15.02.2019 and in his place, his wife i.e. the mother of parties has been substituted as defendant No.1/1. It is to be noted that other legal representatives of deceased-defendant No.1, who are two sons and two daughters are already party in the present civil suit.

4. At the stage of plaintiff's evidence, the defendant No.2 moved an application dated 30.11.2021, seeking leave of Court to produce the original passbook and bank statement of *Khata* No.7812 of Punjab National Bank, Jaipur belonging to father defendant No.1-Radha Kishan Purohit and passbook of State Bank of Bikaner & Jaipur and Bank of Rajasthan, belonging to defendant No.2- Anil Kumar Purohit. In the application, defendant No.2 pleaded that these passbooks are relevant to the issue involved in the present civil suit with counter claim to show that the property which was purchased in the name of plaintiff, was funded by the plaintiff's father and brother through bank transactions. Hence, in order to show such bank transactions, these passbooks were sought to be produced.

5. The application was resisted by the plaintiff and reply was filed stating inter alia that since the passbook of father bears cutting and overwriting at several places as much as same has been produced after his death, hence, such passbook and bank statement are not authentic and genuine document, hence, cannot be taken on record. In addition, objection was also raised that there is no reason for not producing the passbooks along with the written statement. Hence, it was prayed that application be dismissed.

6. Learned trial Court, after pondering over the nature of documents which are bank passbooks and bank statement of defendants No.1 & 2, observed in the impugned order that entries in the passbook bear cutting, overwriting and interpolation at several places as much as there is difference in the entries of handwritten passbook and the bank statement of defendant No.1,

therefore, the passbook does not seem to be an authentic and genuine document. Further, the trial Court observed that defendant has not assigned any sufficient reason for not producing these passbooks with the written statement. Accordingly, with such observations, the trial Court rejected the application of defendant No.2 vide order dated 09.05.2022, which has been impugned herein by means of filing instant writ petition.

7. Learned counsel for petitioner contends that at the stage of seeking leave to produce documents by defendants under Order VIII Rule 1(3) CPC, the Court is not obliged to exercise the jurisdiction to examine the genuineness, evidential value and authenticity of the document, sought to be produced. He submits that the leave may be granted by the Court, subject to satisfaction about the non-production of document at the time of filing of the written statement and considering the sufficiency of reasons of delay. But in the instant case, the trial Court has exceeded its jurisdiction and declined to take documents of bank passbooks and statements of defendants on record, recording a finding that passbook of defendant No.1 is ungenuine as much as its authenticity also seems suspicious. Learned counsel submits that as far as delay is concerned, the suit is at initial stage of recording plaintiff’s evidence and the delay may be compensated by way of awarding appropriate cost to the plaintiff. Hence, his prayer is that impugned order be set aside and the documents be allowed to be produced on record.

To buttress his contention, learned counsel has relied upon the judgment of Rajasthan High Court at Principal seat Jodhpur in case of **Lalit Swami Vs. Union of India [2017 (1) WLC (Raj.)**

UC 783] & judgment of the Hon'ble Supreme Court in case of **Sugandhi Vs. P. Rajkumar [AIR (2020) SC 5486]**.

8. Per contra, learned Senior Counsel appearing on behalf of respondent-plaintiff has vehemently opposed the writ petition and while supporting the impugned order, has argued that the trial Court has exercised its discretion within its jurisdiction and has rightly rejected the application under Order VIII Rule 1(3) CPC. It has been submitted that the property- Plot No. B-36, Anita Colony, Bajaj Nagar, Jaipur, is the self purchased property of plaintiff and the documents of passbooks and bank statement, on which defendant No.2 wants to rely upon, on *prima facie* perusal, shows that there is cutting, overwriting and interpolation in the entries at several places as much as the defendant No.2 has produced the passbook of his father defendant No.1, after his death, that too without assigning any sufficient reasons for non-production of the same along with written statement, therefore, the order impugned does not warrant any interference by the High Court. The trial Court has declined to take the documents on record in its judicious exercise of discretion which does not warrant interference by the High Court, in exercise of jurisdiction under Article 227 of the Constitution of India, hence, writ petition be dismissed.

Learned Senior Counsel has referred the judgment passed by the Coordinate Bench of this Court in case of **Kalyan Sahai Vs. Mangi Lal Selibet Disciple (Bramchari Chela) [2018 (1) WLC (Raj.) UC 122]**, wherein in Para No.4, it was held as under:

> *"4. And indeed, it is not for this court in the exercise of its power of superintendence under Article 227 of the Constitution of India to interfere with the judicious discretion of the courts below exercised in the course of trial. That has so been exercised in the facts of the case at hand. Such*

jurisdiction can be invoked only qua the orders passed by the courts below which are shockingly perverse, or vitiated by misdirection in law. None of the two situations obtain in the present case."

Reliance has also been placed on a judgment passed in case of **Smt. Kusum Babbar Vs. Additional District Judge (Fast Track) No.1, Jaipur [2013 WLC (Raj.) UC 258]**, wherein in Para No.7, it was held as under:

"7. In my considered opinion, the leave of the court under Order 8 Rule 1-A (3) CPC is discretionary and the discretion has to be exercised on the facts and circumstances obtaining in the case. Routine grant of leave under Order 8 Rule 1-A (3) CPC is not countenanced in law. In my considered opinion, in the facts of the case no reason was/ is set up by the defendant for belated filing the photographs in the year 2012 pertaining to the disputed property for which the suit was filed in the year 2005. Aside of aforesaid, as found by the trial court and submitted by counsel for the plaintiff there was no material before the trial court to hold that the photographs in issue related to property in dispute. Neither date nor time of taking of the said photographs for that matter or the name and signature of the Photographer was appended on the photographs. It is also not disputed that said photographs were sought to be produced subsequent to closure of evidence of plaintiff and at the time of commencement of evidence of the defendant. The dominant purpose of Order 8 Rule 1-A CPC and requirement of filing of document along with the pleadings of parties is to expedite adjudication of the dispute and have a crystalised dispute before the trial court at the earliest and cannot be overlooked by taking an overtly liberal view of the provision of Order 8 Rule 1-A (3) CPC. The discretion of the trial court as evident in the impugned order cannot be overturned by this court merely being the superior court. The Hon'ble Supreme Court in case of Subodh Kumar Gupta Vs. Alpana Gupta [(2005) 11 SCC 578] has held that discretionary orders of the trial court in the course of proceeding of a case ought not to be interfered with where such orders are supported by good grounds and reasons. This situation obtains in the present case."

9. Heard. Considered.

10. The clinching and short issue, which has emerged is, as to whether the impugned order whereby the trial Court declined to

grant leave to the defendant to produce documents in question (bank passbooks and bank statement of defendants) on record in the present civil suit for partition and permanent injunction at the stage of plaintiff's evidence, requires interference by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India?

11. In this respect, it is not in dispute that the present civil suit for partition is at the initial stage of recording plaintiff’s evidence and at this stage, defendant filed application under Order VIII Rule 1A(3) CPC, seeking leave of the Court to receive bank passbooks and bank statement of defendants No.1 & 2 in evidence. The trial Court has dismissed the application, recording a finding that authenticity and genuineness of the bank passbook and bank statement, pertaining to defendant No.1 (now deceased), seems to be suspicious and further, no sound reason has been assigned by the defendant, for not producing these documents with the written statement.

12. There is no quarrel about the legal proposition that statutory provision of Order VIII Rule 1A(3) CPC provides a second opportunity to the defendant to produce documents, which ought to have been produced in the Court along with written statement, subject to seeking leave of the Court. By virtue of such provision of law, discretionary power and jurisdiction rest and vest with the Court to grant or refuse such leave, though there is no straight jacket formula for exercising such discretion by the Court. Nevertheless, through a series of judgments, judicial precedent has come to fore that the discretion must be exercised by the Court judiciously and within the parameters of law and not

arbitrarily and capriciously. It is also established proposition of law that such procedure of law should be applied in a manner to advance substantial justice, since all the rules and procedure are being made for administration of justice. The Court should exercise its discretionary jurisdiction to render justice, keeping in mind that the purpose of holding the trial of civil suit is giving opportunity to parties to produce relevant evidence without delay in order to arrive at truth by the Court. A pedantic and too technical view, which may scuttle the valuable right of any of the party to produce evidence, should be avoided.

13. A cumulative perusal of the provisions of Order VIII Rule 1A(3) read with Order XIII Rule 1 CPC, it may be held that the object of such provisions, is to prevent the belated production of document(s), so that there may not be delay in trial and it may not work injustice to the other side. Document(s) on which respective parties want to rely upon should be produced along with the pleadings in original before settlement of issues. Nevertheless, the legislature has left the matter to the discretion of Court, relating to questioning the document(s) at the belated stage and the Court may take its decision within discretionary powers, considering the facts and circumstances of each case. The expectation from the Court is that the discretion should be exercised judiciously, without extending extraneous way to the technicalities or procedural flaw.

14. In support of such view, beneficial reference of the judgment of the Hon'ble Supreme Court in case of **Sughandi** (*Supra*) would be suffice, where while dealing with the provision of Order VIII

Rule 1A(3) CPC, following observations/ opinion were made by the Apex court:-

> *"8. Subrule (3), as quoted above, provides a second opportunity to the defendant to produce the documents which ought to have been produced in the court along with the written statement, with the leave of the court. The discretion conferred upon the court to grant such leave is to be exercised judiciously. While there is no straight jacket formula, this leave can be granted by the court on a good cause being shown by the defendant.*
>
> *9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under subrule (3)."*

15. This Court is of the view that there are multiple factors, which are required to be considered by the Court at the time of exercising its discretionary jurisdiction, to grant or refuse the leave to produce documents by either of the parties at later stage of civil proceedings, if the stage to produce documents has passed. Few of the factors may be categorized hereunder:

(i) Stage of proceedings;

(ii) Reason for not producing documents at earlier stage;

(iii) Nature and relevancy of documents;

(iv) Conduct of party and delay;

(v) Prejudice likely to be caused to adversary parties;

(vi) Genuineness of the documents in first decipher.

These factors have been referred just for illustration and not as an exhaustive list, since there can be other factors also depending on facts of any particular case. It is true that there is no straight jacket formula, but satisfaction of the Court is must.

As far as factors like admissibility, reliability and evidential value of document or the objection that document is forged, concocted or unauthenticated are concerned, same can ordinarily be considered and decided at the appropriate stage of civil proceedings and not at the stage of exercising the jurisdiction by the Court, to grant or refuse the leave. At this stage, no final finding should ordinarily be passed by the Court. Although, it is equally true that if the document, at the first decipher, appears to be a fake document or does not inspire confidence of the Court, leave may be refused by the Court, disallowing to take such document on record, but such discretion must be exercised with all care and circumspection, without entering into the issues, which are required to be gone into during course of trial, including to decide the probative and evidential value of document or admissibility/ reliability of the document in evidence etc. The thin line in this respect is to be well understood. In this regard, a reference of a judgment, delivered by the Coordinate Bench in case of **Lalit Swami** (*Supra*) may be given, wherein in Para No.10, it was observed that *"At the stage of deciding an application under Order VII Rule 14(3) CPC, the Court is not required to see whether the document is forged, concocted or unauthorised. The evidenciary value or reliability of the document are required to be seent at the time of marking exhibit and/ or at*

the time of leading evidence. By way of the order impugned, the Court below ejected the application filed by the plaintiff, for the reasons which are neither relevant nor germane, for deciding the same."

16. Coming to facts of the case in hand, the trial Court swayed away by cuttings and overwriting in the handwritten entries of the bank passbook of defendant No.1. In this respect, contention of learned counsel for defendant is that the passbook of defendant No.1 is original and relevant entries, on which defendant wants to rely, do not bear any cuttings or overwriting or interpolation and if any, same are duly initialed by the concerned bank official. In the opinion of this Court, this is a matter of evidence, which can better be examined and decided by the trial Court after taking the documents of bank passbook and bank statements on record and allowing parties to adduce their evidence thereupon. The plaintiff, obviously would get an opportunity to cross-examine the defendants on the documents, including the entries of bank passbook of defendant No.1, on which defendant No.2 places reliance. At the stage of considering application under Order VIII Rule 1A(3) CPC, the trial Court has exceeded its jurisdiction to deny the leave to produce these documents on record by the defendant, recording a finding that the authenticity and genuineness of the documents, seem to be suspicious. The trial Court failed to appreciate that though it is case of plaintiff that the property bearing Plot No. B-36, Anita Colony, Bajaj Nagar, Jaipur, was purchased by him with his own fund and by taking loan from the department, yet in the written statement of defendants, it has

been pleaded that fund to purchase the property bearing Plot No. B-36, Anita Colony, Bajaj Nagar, Jaipur, was transferred by defendants No. 1 & 2 in the bank account of plaintiff, through bank transactions and in support of such pleadings, defendant wants to produce bank passbook and bank statements of defendants No.1 & 2. In such view, documents may not be said to be irrelevant and their authenticity/ genuineness and evidential value are subject to the decision of the trial Court, after analyzing of evidence of parties adduced thereupon. It is to be noted that there is no objection in respect of bank passbook of defendant No.2. The trial Court has committed jurisdictional error in not appreciating the other relevant factors, which permit to exercise jurisdiction in favour of defendant No.2 to take documents of bank passbooks and bank statement of defendant No.1 & 2 on record, subject to deciding their genuineness/ probative evidential value at the time of final decision, after giving opportunity to both parties to adduce their evidence and after analyzing all the evidence, so come on record.

17. As far as assigning no sound reason for non-production of the documents along with written statement is concerned, documents have been produced at the stage of plaintiff’s evidence and considering the nature of present suit for partition as also relevancy of such documents in context to pleadings of the defendants’ written statement, for the delay in filing documents by the defendant, interest of justice would be served by imposing costs on the defendants, to compensate the plaintiff. This Court finds that taking into consideration the other factors and attaining

circumstances, the pragmatic and lenient view ought to have been taken by the trial Court, exercising its jurisdiction in a judicious manner to impart justice and for delay, plaintiff could have been compensated by awarding costs.

18. Thus, this Court is of considered opinion that the trial Court has failed to exercise its discretionary jurisdiction in true perspective and in judicious manner as much as declining to grant leave to defendant to produce documents in question, would cause greater hardship to the defendant and may result into injustice, whereas plaintiff may be compensated by awarding costs for delay and would face no prejudice, since he will get full opportunity to cross-examine the defendants on these documents. The suit is undeniably at the stage of recording plaintiff's evidence. For such reasons, the impugned order warrants interference by the High Court in exercise of its jurisdiction under Article 227 of the Constitution of India.

19. As far as judgment referred by learned Senior Counsel appearing for respondents in case of **Kalyan Sahai** (*Supra*) is concerned. This Court held that unless the order impugned vitiates by misdirection in law, same should not be interfered with by the High Court under Article 227 of the Constitution of India, but this Court finds that impugned order herein is contrary to the established principles of law. In case of **Smt. Kusum Babbar** (*Supra*), the photographs in question were not found in relation to the property in dispute, hence denied to be taken on record but in the present case, documents are related to the controversy between parties. Thus, both the judgments do not render any

support to the plaintiff for sustenance of the impugned order in law.

20. As a final result, the present writ petition succeeds and is hereby allowed. The impugned order dated 09.05.2022 is set aside. The application dated 30.11.2021 filed by defendant No.2 is allowed and documents of bank passbooks and bank statement, relating to defendants No.1 and 2, are allowed to be taken on record by the Trial Court.

However, it is made clear that plaintiff shall be at liberty to challenge the genuineness, evidential value and authenticity of the documents during course of trial, which would be considered and decided by the trial Court in accordance with, without being prejudiced by any of the findings/ observations of this Court recorded hereinabove.

21. All pending application(s), if any, stand(s) disposed of.

(SUDESH BANSAL),J

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