

LAKSHMI & ANR.

v.

CHINNAMMAL @ RAYYAMMAL & ORS.
(Civil Appeal No. 2243 of 2009)

APRIL 8, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Code of Civil Procedure, 1908 – O.13 r.10 – Genuineness of a deed challenged before civil court – Initiation of criminal proceedings also – In criminal proceeding deed sent for examination of signature and thumb, impression of the person challenging it, to forensic expert – Plaintiffs application calling for forensic report regarding handwriting allowed – But application calling for report regarding thumb impression dismissed – Held: Dismissal of the later application not justified – If bringing on record a document is essential for proving a case, ordinarily the same should not be refused – The procedural mechanics necessary to arrive at just decision must be encouraged.

Appellant and respondents were co-sharers. Allegedly they entered into a deed of partition. Appellant filed a suit questioning the genuineness of the deed. He also lodged an FIR in that regard. In the criminal proceedings, the partition deed was sent for examination of signature and thumb impression of the appellant.

In the pending suit, appellant filed an application for calling for the report of forensic report from the court of Judicial Magistrate as regards purported signature and the same was allowed. Thereafter he filed another application for calling for the forensic report regarding the thumb impression. Trial court rejected the application on the ground that the application did not furnish requisite particulars and Order 13 Rule 10 CPC did not

A empower civil court to direct production of document from the custody of police. An application under Article 227 of the Constitution of India was dismissed by High Court. Hence the present appeal.

B Allowing the appeal, the court

HELD: 1.1. If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged. The court in the said process, however, would not encourage any fishing enquiry. It would also not assist a party in procuring a document which he should have himself filed. [Para 12] [668-D, E]

D 1.2. There cannot furthermore be any doubt that by calling for such documents, the court shall not bring about a situation whereby a criminal proceeding would remain stayed as it is a well settled principle of law that where a civil proceeding as also a criminal proceeding is pending, the latter shall get primacy. [Para 13] [668-F]

F 1.4. In a civil suit, a document has to be proved. The report of an expert is also required to be brought on record in terms of the provisions of the Evidence Act. Having regard to the provisions contained in Order XIII, Rule 8 CPC, the civil court would furthermore be entitled to substitute the original document by a certified copy. Therefore, the original document could have been called for. [Para 14] [669-G]

G *Union of India and Anr. v. The State and Anr.* 1961 XLII ITR 753; *Kailash v. Nanhku and Ors.* (2005) 4 SCC 480 and *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr.* (2006) 1 SCC 75, relied on.

H

Anil Behari Ghosh v. Smt. Latika Bala Dessi and Ors. AIR 1955 SC 566 and *Shanti Kumar Panda v. Shakuntala Devi* (2004) 1 SCC 438, referred to.

2.1. In view of the fact that appellants in their application disclosed that a First Information Report was lodged on 1.11.2003 against the defendants. The same was registered as Crime No.699/03; that the original partition deed dated 28.11.2002 was sent to the Director, Forensic Science Department along with appellant's admitted signatures by the court of Judicial Magistrate, at the request of the Investigating Officer and that plaintiffs have come to learn that a report of the expert was also filed therein in regard to the thumb impression of the appellants, trial Judge, committed a manifest error in holding that requisite particulars have not been furnished. [Paras 9 and 10] [667-F-G; 668-A-B]

2.2. Trial Judge himself had allowed a similar application so far as the opinion of the handwriting expert was concerned. It is, therefore, difficult to comprehend as to on what basis a similar prayer made by the appellant in regard to the opinion of the finger print expert could be held to be not maintainable. [Para 11] [668-C]

Case Law Reference:

AIR 1955 SC 566	Referred to.	Para 13
(2004) 1 SCC 438	Referred to.	Para 13
1961 XLII ITR 753	Relied on.	Para 14
(2005) 4 SCC 480	Relied on.	Para 14
(2006) 1 SCC 75	Relied on.	Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2243 of 2009.

From the Judgment & Order dated 5.1.2007 of the High

A Court of Judicature at Madras in C.R.P.D No. 559 of 2005.

Vijay Kumar, C. Jayaraj and Malini Poduval for the Appellants.

B V. Prabhakar, Ramjee Prasad and Revathy Raghavan for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

C 2. 'Procedural Mechanics' involving interpretation of Order XIII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter called and referred to for the sake of brevity as the 'Code') falls for consideration in this appeal which arises out of a judgment and order dated 5.1.2007 passed by a learned Single Judge of the High Court of Judicature at Madras in CRP No.559 of D 2005.

E 3. Parties hereto are co-sharers. Allegedly, a deed of partition was entered into by and between them on or about 28.11.2002. Questioning the genuineness of the said deed of partition, a suit for cancellation thereof was filed by the F appellant therein. Indisputably, in relation thereto, a First Information Report was also lodged. During investigation, the Investigating Officer recovered the purported original deed of F partition from the custody of the respondent. It was sent for examination to the Forensic Science Laboratory, Chennai.

G 4. Appellant filed an application in the said suit marked as IA No.1 of 2005 calling for the report of the forensic expert from the Court of Judicial Magistrate, Sathyamangalam as regards the purported signatures of the petitioner. The said application H was allowed by the learned Trial Judge. In the meantime, allegedly a second report with regard to the of thumb impression of the petitioner on 15.2.2005 was also received from the Forensic Science Laboratory. He filed a similar application under Order XIII Rule 10 of the Code before the learned Trial Judge. By an order dated 8.3.2005, the Trial Court

rejected the said application, stating :

“But the petition does not contain the details such as serial number and the date of the documents which are requested to be sent for. The petition does not mention that the documents are the records of Crime No.699/2003 or the related records. It has not been stated in both the petition and the counter statement that the investigation is over. Only the crime number has been mentioned in the petition. Since it has not been stated on behalf of the petitioner that the investigation is over and that the final report has been filed in this regard, and that it is not possible for the court to ask from time to time the documents which are in their possession as a result of investigation and that the provisions of Order XIII Rule 10 of CPC do not empower the civil court to direct the production of document which are in the custody of police and that it has not been stated whether such document have been filed and kept on the file of the court of judicial Magistrate and that the issue whether the partition deed is false or true to be established by examining witnesses and it is the responsibility of the plaintiff in this regard and after that the examination of witnesses of both plaintiff and defendant are not over and that keeping in mind the objections raised by the respondents/defendants that the petitioners/ plaintiffs are in collusion with the Sathyamangalam Police and that it is not possible to send for the documents with the police when the investigation is not over and that the plaintiff could establish the falsity of the partition deed by other witnesses and other documents and for the said reasons the petition is not acceptable and having decided so.”

5. An application under Article 227 of the Constitution of India filed thereagainst has been dismissed by the High Court by reason of the impugned judgment.

6. Mr. Vijay Kumar, learned counsel appearing on behalf

A of the appellant, would submit

(1) The learned Trial Court and consequently the High Court committed an error in observing that the details of the criminal case as also the court wherein it had been pending was not disclosed by the appellant.

B

(2) Order XIII Rule 10 of the Code having wide application and having been enacted to further the ends of justice and avoidance of multiplicity of proceedings, the same should have invoked.

C

(3) The genuineness and authenticity of the partition deed dated 28.11.2002 being in issue in the suit, the appellants were entitled to call for the report of the expert to prove their case.

D

7. Mr. V. Prabhakaran, learned counsel appearing on behalf of the respondent, on the other hand, would submit:

(i) By directing the criminal court to transfer the evidence collected by the investigating officer the proceeding before the criminal court shall remain stayed, the impugned order should not be interfered.

E

(ii) Appellant should have obtained the certified copy of the report and filed it before the civil court, which having not been done, the impugned judgment cannot be faulted with.

F

(iii) Appellant having not been able to establish that the report in question was necessary for proving their case, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

G

8. Order XIII of the Code provides for production, H impounding and return of documents. Rule 1 of the said Order

mandates production of original documents by the parties at or before the settlement of issues. Rule 9 of the Order XIII provides for return of admitted documents. Rule 10 empowers the Court to send papers from its own records or from other courts. It reads as under :

"10. Court may send for papers from its own records or from other Courts.—(1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit."

9. Appellants in their application disclosed the following facts:

- (1) That a First Information Report was lodged on 1.11.2003 against the defendants. The same was registered as Crime No.699/03.
- (2) The original partition deed dated 28.11.2002 was sent to the Director, Forensic Science Department along with appellant's admitted signatures by the Court of Judicial Magistrate, Sathyamangalam at the request of the Investigating Officer.

A (3) Plaintiffs have come to learn that a report of the expert was also filed therein in regard to the thumb impression of the appellants.

B 10. In that view of the matter by the appellants, the learned Trial Judge, in our opinion, committed a manifest error in holding that requisite particulars have not been furnished.

C 11. Furthermore, the learned Trial Judge himself had allowed a similar application so far as the opinion of the handwriting expert was concerned. It is, therefore, difficult to comprehend as to on what basis a similar prayer made by the appellant in regard to the opinion of the finger print expert could be held to be not maintainable.

D 12. If bringing on record a document is essential for proving the case by a party, ordinarily the same should not be refused; the Court's duty being to find out the truth. The procedural mechanics necessary to arrive at a just decision must be encouraged. We are not unmindful of the fact that the court in the said process would not encourage any fishing enquiry. It would also not assist a party in procuring a document which E he should have himself filed.

F 13. There cannot furthermore be any doubt that by calling for such documents, the Court shall not bring about a situation whereby a criminal proceeding would remain stayed as it is a well settled principle of law that where a Civil proceeding as also a Criminal proceeding is pending, the latter shall get primacy.

G In *Anil Behari Ghosh v. Smt. Latika Bala Dessi & Ors.* [AIR 1955 SC 566], it is stated :

H "The learned counsel for the contesting respondent suggested that it had not been found by the lower appellate court as a fact upon the evidence adduced in this case, that Girish was the nearest agnate of the testator or that Charu had murdered his adoptive father, though these

matters had been assumed as facts. The courts below have referred to good and reliable evidence in support of the finding that Girish was the nearest reversioner to the estate of the testator. If the will is a valid and genuine will, there is intestacy in respect of the interest created in favour of Charu if he was the murderer of the testator. On this question the courts below have assumed on the basis of the judgment of conviction and sentence passed by the High Court in the sessions trial that Charu was the murderer. Though that judgment is relevant only to show that there was such a trial resulting in the conviction and sentence of Charu to transportation for life, it is not evidence of the fact that Charu was the murderer. That question has to be decided on evidence.”

In *Shanti Kumar Panda v. Shakuntala Devi* [(2004) 1 SCC 438], this Court held :

“(3) A decision by a criminal court does not bind the civil court while a decision by the civil court binds the criminal court. An order passed by the Executive Magistrate in proceedings under Sections 145/146 of the Code is an order by a criminal court and that too based on a summary enquiry. The order is entitled to respect and wait before the competent court at the interlocutory stage. At the stage of final adjudication of rights, which would be on the evidence adduced before the court, the order of the Magistrate is only one out of several pieces of evidence.”

14. In a Civil Suit, a document has to be proved. The report of an expert is also required to be brought on record in terms of the provisions of the Indian Evidence Act. Having regard to the provisions contained in Order XIII, Rule 9 (1) first proviso (a)(i) of the Code, the Civil Court would furthermore be entitled to substitute the original document by a certified copy. We, therefore, fail to appreciate as to why the said original document could not be called for.

A We may notice that a Division Bench of the Calcutta High Court in *Union of India & Anr. v. The State & Anr.* [1961 XLI ITR 753] held that a document may also be called for from the authorities under the Income Tax Act, stating :

B “Further, it may be pointed out that Order XIII, rule 10(I) of the Civil Procedure Code does not refer to a judicial proceeding. It refers to a suit or proceeding. Even if the proceeding in connection with the issue of a search warrant under the Foreign Exchange Regulation Act be considered a non-judicial proceeding on the part of the
C Magistrate, such a non-judicial proceeding would still be within the scope of Order XIII, rule 10(1) of the Civil Procedure Code. In the circumstances, we cannot accept the contention of Mr. Dutta that as there was no proceeding before the Chief Presidency Magistrate the requisition no
D proceeding before the Chief Presidency Magistrate the requisition under Order XIII, rule 10 of the Civil Procedure Code made by the Income-tax Officer would not be a valid requisition.”

E In *Kailash v. Nanhku & Ors.* [(2005) 4 SCC 480], this Court has categorically held:

F “All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by
G express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.”

H In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh &*

Anr. [(2006) 1 SCC 75], it was observed :

"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :

- (i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.
- (ii) where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it;
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- (v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant."

15. In view of the aforementioned pronouncements, we are of the opinion that the learned Trial Judge should have acceded to the prayer of the appellants herein.

16. The impugned judgment, therefore, cannot be sustained. It is set aside accordingly. The appeal is allowed. No costs.

K.K.T.

Appeal allowed.