

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 36/2022

Pronounced on: 13.09.2023

Rajan Gupta Petitioner(s)

Through:- Mr. Rohit Kohli, Advocate.

V/s

Manoj GuptaRespondent(s)

Through:- Mr. Akash Gupta, Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. This petition has been filed under Article-227 of Constitution of India for setting aside the order dated 23.11.2021 passed by the Court of City Judge, Jammu (hereinafter to be referred to as 'the Trial Court') whereby the application filed by the respondent under Order-XI Rule-12 & 14 CPC had been allowed.

02. A civil suit for declaration was filed by the petitioner (hereinafter referred to as 'plaintiff') declaring the WILL executed by the late father of the parties namely Shri Krishan Kumar Gupta on 19.07.2019 and registered on same day before the Court of Ld. Sub-Registrar, 2nd Additional Munsiff, Jammu as illegal, inoperative, null and void, and nonest in the eyes of law; with consequential relief of permanent prohibitory injunction; and further consequential relief of mandatory injunction. The plaintiff had enclosed Annexures-A to E with the suit

which were photocopies of memo of family arrangement, lease deed, business conducting agreement, Will and Family settlement.

03. Thereafter an application under Order-VI Rule-17 CPC was moved by the plaintiff along with Annexure-A to E which contains amendment of the plaint which was allowed vide order dated 24.07.2020. Pursuant to the order of the Trial Court, the plaintiff filed amended plaint for declaration declaring the WILL executed by the late father of the parties namely Shri Krishan Kumar Gupta on 19.07.2019 and registered on the same day before the Court of Sub-Registrar, 2nd Additional Munsiff, Jammu as illegal, inoperative, null & void and nonest in the eyes of law. Along with the suit for declaration declaring that the WILL DEED dated 24.09.2009 is the first WILL of Lt. Sh. Krishan Kumar Gupta and further declaration that the plaintiff is the owner of M/s Ganesh Cloth House along with its assets and double story building and also the lessee of shop measuring 29”x63” with open area of 29”x47’ situated within the Apsra Theatre Complex, Gandhi Nagar, Jammu and further declaration that plaintiff is entitled to the Business Conducting Charges from M/s Biba Apparels and also filed the suit for permanent prohibitory injunction restraining the defendant/respondent from claiming any right over the properties of Lt. Sh. Krishan Kumar Gupta as detailed in the suit as well as in the impugned WILL DEED dated 19.07.2019 and for permanent prohibitory injunction restraining the defendant from interfering in the functioning/working of M/s Apsra Theatre/Multiplex as well as to cause interference in the rest of House bearing No. 17 B/C, Gandhi Nagar,

Jammu except two rooms given to him in terms of Family Settlement dated 27.03.2006.

04. With the amended plaint, the plaintiff filed Annexures-A to L which include photocopies of memo of family arrangement, license deed, lease deed, business conducting agreement, conducting agreement between Krishan Kumar Gupta and adlabs films Ltd, memo of understanding profit and loss account of Apsra Theatre, Jammu for the year ending on 31.03.2013, receipt memo of Auqaf Islamia Jammu, memorandum of understanding, will dated 19.07.2019, Will dated 24.09.2009 and family settlement deed respectively.

05. The respondent (hereinafter referred to as 'defendant') filed an application under Order-XI Rule-12 & 14 read with Section 151 CPC for production of the documents. The contention of the respondent was that the additional documents were enclosed with the amended plaint and the nature of some of the documents as annexures in original plaint and subsequently those very annexures in the amended plaint have been changed by the plaintiff in the amended plaint. It is submitted that these documents appear to be forged, fabricated, managed and manufactured by the plaintiff. The plaintiff relies on these documents in the suit, reliance was placed on annexure-C&E with the original plaint and D&L with the amended plaint and since the very execution of these documents is under cloud, therefore, before filing his written statement and putting up his defence effectively, a direction was sought that the plaintiff may be directed to produce original documents upon which he relies.

06. This application was allowed by the Trial Court vide order dated 23.11.2021 by holding that after perusal of the amended plaint and photocopy of the documents reveals that the documents are required for effecting disposal of the case and accordingly, directing the plaintiff to produce the original documents which are relied upon by him and which are in his possession.

07. The plaintiff has challenged the impugned order on the grounds that the same is erroneous and contrary to law. The learned Trial Court has not followed the procedure prescribed under Order-XI Rule-14 CPC. The order to produce the documents could only be passed after perusing the affidavit filed by the plaintiff in accordance with the provisions of Order-XI Rule-14 of CPC. The Trial Court has, thus exercised its jurisdiction illegally and with material irregularity causing failure of justice.

08. Before considering the contentions raised by the plaintiff, it would be appropriate to consider the nature and scope of jurisdiction of this Court under Article-227 of the Constitution of India. The High Court vested with supervisory powers to ensure all subordinate Courts and Tribunals exercise the powers vested in them within their authority. The Hon'ble Supreme Court has considered the powers of the High Court under Article-227 in a catena of judgments and has laid down certain principles for invoking jurisdiction under Article-227.

09. It is well settled that the power under Article-227 may be exercised in cases of grave injustice or failure of justice i.e., when (i) the Court or Tribunal has exercised the jurisdiction not vested in it; (ii) or has

failed to exercise jurisdiction which results in failure of justice; (iii) the jurisdiction though available is exercised in manner tantamount to overstepping the limit of jurisdiction.

10. In **Waryam Singh & anr. vs Amarnath & ors.** reported as **AIR 1954 SC 215**, it was held that

“This power of superintendence conferred by article 227 is, as pointed out by Harries C. J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*(2), to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.”

11. The Hon'ble Apex Court in **Ouseph Mathai v. M. Abdul Khadir**, reported as **2002 (1) SCC 319**, has observed in Para 4 as under:

"4. It is not denied that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution are extraordinary and discretionary powers as distinguished from ordinary statutory powers. No doubt Article 227 confers a right of superintendence over all courts and tribunals throughout the territories in relation to which it exercises the jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under the said Article as a matter of right. In fact power under this Article cast a duty upon the High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duties by such courts and tribunals in accordance with law conferring powers within the ambit of the enactments creating such courts and tribunals. Only wrong decisions may not be a ground for the exercise of jurisdiction under this Article unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the

subordinate courts and tribunals resulting in grave injustice to any party.”

12. Similarly, in **Shalini Shyam Shetty & ors. Vs. Rajendra Shankar Patil** reported as **(2010) 8 SCC 329**, and **Waryam Singh & anr. vs Amarnath & ors.** reported as **AIR 1954 SC 215**, it has been observed that the scope and power of this Court under Article-227 of the Constitution are, thus, well settled, now applying the same to the facts of this case.

13. Thus the High Court while exercising its powers under Article-227 of the Constitution of India has not to act as an appellate Court and substitute its own judgment in place of subordinate Courts to correct an error. The High Court has to exercise its supervisory powers sparingly and in appropriate cases to keep the subordinate Courts in their authority.

14. The Trial Court after perusing the file and considering the objections of the other side had relied upon Order-VII Rule-14 CPC which deals with production of documents on which the plaintiff sues or relies. While relying on Order-VII Rule-14 CPC, the Court held that when the plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

15. The case of the plaintiff is that the order of the Trial Court directing production of documents is without following the procedure prescribed in Order-XI Rule-14 CPC. This application was filed by the respondents under Order-XI Rule-12 & 14 read with Section 151 CPC for production of documents.

16. Order XI Rule-12 & 14 of CPC reads as under:-

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit.

Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

14. 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.

17. Order-XI Rule-12 of CPC provides that any party without filing a affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. This provision pertaining to the discovery of documents enable a party to

compel his opponent to disclose the documents relating to any matter in question in a suit, in his possession or power. The purpose of discovery of documents is to secure, as far as possible, a disclosure of all material documents in the possession or power of the opposite party and to put an end to unnecessary and protracted inquiry as to the material documents in the possession and under the control of the opposite party.

18. It is sufficient for discovery, if the document is relevant for the purpose of throwing light on the matter in controversy. The only record that the Court before granting an application under Order-XI Rule-12 CPC is required to consider the relevancy of the documents particularly when a specific document is sought to be discovered by a party and whether the document is really required for effective disposal. Every document which throws light on the case is document relating to a matter in dispute of the proceedings. The object of obviate the necessity of producing evidence and to expedite the disposal. It is well settled that if a document is in the possession of a party, it must be produced under Order-XI Rule-14 of CPC. This Rule provides that 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.

19. Where a suit is based on the documents, furnishing of the copy of the documents to the defendant is necessary or imperative, in the interest of justice and the Court in exercise of its inherent powers, can direct the plaintiff to furnish copy of such documents to the defendant.

These provisions are based on sound reasons, the object of the Rule is to apprise the defendant regarding foundations of the petitioner's claim and also to exclude production of the documents of a doubtful nature at belated stage. All such documents which the plaintiff intends to rely on oath, which are in his possession or power, can be directed to be produced.

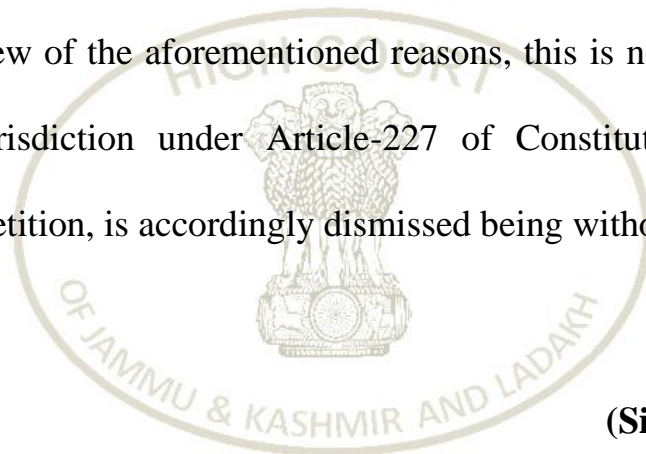
20. The plaintiff has not denied that these documents are not in his possession but his only objection is that the Court has not ordered the same in accordance with the procedure prescribed under Order-XI Rule-14 of CPC. This fact that the trial Court did not order the same to be produced on oath or the same is not in accordance with Form-B of Appendix will not result in the impugned order being without jurisdiction as the procedure is directory and not mandatory. The order of the Court directing the plaintiff to produce the original documents will go a long way in deciding the controversy. The original documents, on which the plaintiff has based his entire suit, are necessary and relevant for the effective adjudication of this matter. The plaintiff is relying upon documents in support of his claim, he has to enter the documents in a list and produce in Court when the plaint is presented and if the same are not in his possession, he may state in whose possession, they are.

21. Learned Trial Court after considering all these aspects rightly held that the documents enclosed with the amended plaint are relevant and original documents are required for the disposal of the case and directed the plaintiff to produce documents.

22. This apart the Trial Court has exercised the jurisdiction vested in it passing the impugned order and has not overstepped the same. This is not a case which warrants for supervisory jurisdiction by this court.

23. The order impugned viewed from any angle does not result in serious miscarriage of justice. The power of superintendence under Article-227 of the constitution is not available to interfere with the discretionary orders passed by the Civil Court in the course of the suit unless such orders are found to be grossly irrelevant or perverse. The discretion vested in this Court under Article-227 of the constitution is, thus, required to be exercised in rarest of rare case.

24. In view of the aforementioned reasons, this is not a fit case for exercise of jurisdiction under Article-227 of Constitution should be invoked. The petition, is accordingly dismissed being without any merit.



(Sindhu Sharma)
Judge

JAMMU
13.09.2023
Ram Murti/PS

Whether the judgment is speaking : Yes
Whether the judgment is reportable : Yes/No