

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No(s). 3048 OF 2019
(Arising out of SLP(C) No(s).28208 OF 2018)

MARWARI RELIEF SOCIETY

APPELLANTS(s)

VERSUS

AMULYA KUMAR SINGH

RESPONDENT(s)

J U D G M E N T

BANUMATHI, J.:

(1) Leave granted.

(2) This appeal arises out of judgment and order dated 24th April, 2018 passed by the High Court of Jharkhand at Ranchi in Writ Petition (C) No.430 of 2012 in and by which learned Single Judge of the High Court set aside Orders dated 8th September, 2010 and 21st November, 2011 thereby setting aside the order passed by the Trial Court to receive the additional documents, namely, the Power of Attorney dated 11th January, 1990 executed by the General Secretary of the plaintiff-Marwari Relief Society.

(3) The appellant-plaintiff is a charitable institution incorporated under the Indian Companies Act, 1913 and manages a health resort at Ranchi which is known as Marwari Arogya Bhawan. According to the appellant-plaintiff, there are

several residential cottages and also rooms. The person who is availing the facility in the said Society is granted leave and licence to occupy a designated cottage/room on payment of maintenance charges and other establishment charges like electricity charges etc. Case of the appellant-plaintiff is that the respondent-defendant was granted licence to occupy a residential cottage w.e.f. 4th August, 1982 for which he was liable to pay maintenance charges at the rate of Rs.500/- per month and the electrical charges at the rate of Rs.100/- per month and other establishment charges. Alleging that the respondent has not paid the maintenance charges, the appellant-plaintiff issued a legal notice through its advocate on 19th August, 1987, calling upon the respondent to make payment of Rs.20,900/- and further calling upon him to vacate the cottage/quarter. After issuing the notice, the appellant-plaintiff filed an Eviction Title Suit NO.5 of 1991 before the Court of the Subordinate Judge at Ranchi. According to the appellant-plaintiff along with the plaint certain documents were filed about which clear reference was made in the plaint.

(4) The said suit was decreed ex-parte by the Trial Court on 24th September, 1992. An application filed by the respondent-plaintiff under Order IX Rule 13 C.P.C. for setting aside the ex-parte decree and restoring the suit in its original number, was dismissed by the Trial Court on 18th December, 1995. Thereafter, the respondent-plaintiff preferred another appeal before the Appellate Court which was allowed and the ex-parte

decree dated 24th September, 1992 was set aside and the restored to its original number. Admittedly, the suit was originally filed before Sub-Judge Court NO.V; but after restoration, the same was placed before Sub-Judge Court No.VII. It appears that during the transit, the documents filed along with the plaint were either missing or not traceable. Thereafter, the suit was again transferred from Sub-Judge Court NO.VII to Sub-Judge Court NO.V.

(5) Before Sub-Judge Court NO.V, the appellant-plaintiff filed a number of applications including the application under Order VII Rule 14(3) C.P.C. to file the documents which were filed along with the plaint and said to be not traceable. The said application was allowed by the Sub-Judge Court No.V on 8th September, 2010 permitting the applicant to file the documents which were filed along with the plaint, namely, (i) Copy of original application dated 4th August, 1982 executed by the respondent-defendant; (ii) Copy of the Advocate's Notice dated 19th August, 1987; and (iii) Copy of Registration Receipt for the above notice dated 19th August, 1987. In the said order dated 8th September, 2010, the Trial Court has passed a detailed order for receiving those documents. Be it noted that Order dated 8th September, 2010 was not challenged then and there by the respondent-defendant.

(6) Subsequently, the appellant-plaintiff has filed another application under Order VII Rule 14(3) C.P.C. praying for filing the original Power of Attorney executed by the

plaintiff-Society in favour of Ramnandan Prasad. That application was also allowed on 21st November, 2011. Both the orders, namely, 18th September, 2010 and 21st November, 2011 were challenged by the respondent-defendant in Writ Petition (c) No.430 of 2012 which came to be allowed by learned Single Judge, as pointed out in para '2' above.

(7) We have heard Devashish Bharuka, learned counsel appearing for the appellant-plaintiff and Mr. Kumar Parimal, learned counsel appearing for the respondent-defendant. We have perused the orders dated 8th September, 2010 and 21st November, 2011 and also perused the impugned judgment and the evidence/materials on record.

(8) As pointed out earlier the suit was restored by the Appellate Court to its original number and it was transferred to Sub-Judge Court NO.VII and then again transferred to Sub-Judge Court No.V. By perusal of the plaint, it is seen that para '2' of the plaint refers to Agreement dated 4th August, 1982 and para '12' of the plaint refers to the eviction notice sent by the appellant-plaintiff through their advocate on 19th August, 1987. So far as the General Power of Attorney is concerned, learned counsel appearing for the appellant-plaintiff has drawn our attention to the *verification* as per which the plaint was verified by Ramnandan Prasad in his capacity as a "*constituted agent and attorney of the plaintiff*". It is not as if the power of attorney has been sought to be

brought on record for the first time when the application was filed in the year 2011. In the impugned judgment, learned Single Judge has observed that except at the verification portion, there is no reference that Ramnandan Prasad is a "constituted agent and attorney of the plaintiff" and there are no averments in the plaint in respect of the documents sought to be produced through the applications dated 27th August, 2010 and 14th June, 2011.

(9) Considering the averments made in the plaint, in our view learned Single Judge was not right in observing that there are no averments made in the plaint in respect of the documents sought to be produced through the said applications. As pointed out earlier, there is clear reference to the documents viz., Agreement dated 4th August, 1982 and the notice issued by the appellant-plaintiff on 19th August, 1987 to the respondent for payment of arrears and calling upon him for vacating the quarter. Though the cause-title of the plaint does not state that the appellant-Marwari Relief Society is represented through Ramnandan Prasad, however, the verification of the plaint clear states that Ramnandan Prasad is a "*constituted agent and attorney of the plaintiff*" which in our considered view is sufficient to hold that plaint has been filed by the power of attorney holder who is a duly "constituted agent". Learned Single Judge fell in error in not keeping in view the averments made in the plaint and due verification of the plaint.

(10) Resultantly, the impugned order is set aside and the appeal is allowed. Since the suit is of the year 1992, the Trial Court is directed to proceed with the suit pending before it in accordance with law and dispose of the same expeditiously.

.....J.
(R. BANUMATHI)

.....J.
(R. SUBHASH REDDY)

NEW DELHI,
MARCH 14, 2019.