

**The High Court of Madhya Pradesh
MP 82/2019
Dr. Sudheer Jain and Anr. Vs. Sunil Modi and Anr.**

Gwalior, dtd. 29/01/2019

Shri DD Bansal, counsel for the petitioners.

Shri Bhawan Raj Pandey, counsel for the respondents.

This petition under Article 227 of the Constitution of India has been filed against the order dated 30/08/2017 passed by First Additional Judge to the Court of First Civil Judge, Class-II, Vidisha in COC No. 82-A/2015, by which the application filed by the petitioners under Order 7 Rule 14(3) of CPC has been rejected and the trial Court has refused to take the partition deed on record on the ground that by order dated 14/06/2016, the petitioners were directed to file all the documents pertaining to their title and since they have failed to do, therefore, now they cannot be allowed to file the additional documents.

The necessary facts for the disposal of the present petition in short are that the plaintiffs/ petitioners have filed a suit for permanent injunction as well as for enforcement of their easementary rights.

It appears that on an application filed by the respondents, the trial Court by order dated 14/06/2016, had directed the petitioners to file all the documents pertaining to their title and also to file an affidavit, otherwise, they would not be given any

opportunity to file the same in view of Section 164 of the Indian Evidence Act.

The petitioners did not file the partition deed in compliance of order dated 14-5-2016. However, later on, the petitioners filed an application under Order 7 Rule 14 of CPC seeking leave of the Court to file a partition deed. The said application has been rejected by the impugned order by holding that the petitioners were already in possession of partition deed even on the date of order dated 14/06/2016, but the said order was not complied with, and no explanation has been given for not filing the documents on earlier occasion.

Challenging the order passed by the Court below, it is submitted by the counsel for the petitioners that undisputedly, till 30/08/2017 no issues were framed even today, no issues have been framed so far. Section 164 of the Evidence Act does not create an absolute bar. Similarly, the order under Order 7 Rule 14(3) of CPC also gives discretion to the Court to grant leave to the plaintiff to file the documents at a later stage. The partition deed cannot be said to be a document of title and thus, it is incorrect to say that the petitioner has violated the order dated 14/06/2016. Thus, it is submitted that as earlier there was no direction to the petitioner to file the partition deed, therefore, the provision of Section 164 of the Evidence Act would not be

applicable to the facts and circumstances of the case.

Per contra, it is submitted by the counsel for the respondents that the petitioner had failed to place all the necessary documents on record in compliance of the order dated 14/06/2016, therefore, the trial Court has not committed any mistake in refusing to grant leave to the petitioners to file the additional documents. However, it is fairly conceded by the counsel for the respondents that even till today, no issues have been framed.

Heard the learned counsel for the parties.

The order dated 14/06/2016 has not been placed on record, however, the copy of the same was provided to the Court. By order dated 14/06/2016, apart from the other documents, the petitioner was also directed to file all the documents relating to their title and it was observed that in case if there is any failure on the part of the petitioner to comply the order, then provision of Section 164 of the Evidence Act would apply.

Before proceeding further, this Court feels it appropriate to consider the implication of Section 164 of the Evidence Act which reads as under:-

"164.Using, as evidence, of document, production of which was refused on notice.—When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court."

From the plain reading of Section 164 of the Evidence Act, it

is apparent that when a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document without the consent of the parties or order of the Court. Thus, it is clear that the bar as contained in Section 164 of the Evidence Act is not absolute. The opposite party can waive its rights to object the filing of document at a later stage by giving express consent to the same, and similarly, the words "*or the order of the Court*" gives discretion to the Court to grant leave to file such documents. Therefore, when any provision gives discretion to the Court, then it should be exercised judiciously. The Supreme Court in the case of **Central Bank of India Vs. Ravindra** reported in **(2002) 1 SCC 367** has held as under :

55.8.....The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.

Thus, it is clear that the bar as contained under Section 164 of the Evidence Act is not absolute and it still gives discretion to the Court to permit the defaulter party to produce the documents at a later stage which he has had notice to produce. In the present case, the Court has not exercised its discretion and has not given a finding as to why the petitioners cannot be permitted to place the partition deed on record at a later stage, specifically when, even the issues have not been framed so far, therefore, no prejudice would be caused to the respondents.

Order 7 Rule 14 (3) of CPC reads as under:-

"Order 7 Rule 14: Production of document on which plaintiff sues or relies

(1)xxxxxxxxxxxxxxxxxxxx

(2)xxxxxxxxxxxxxxxxxxxx

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)xxxxxxxxxxxxxxxxxxxx

From the plain reading of the above provision, it is clear that the plaintiff can file the documents at a later stage with the leave of the Court. Thus, it is clear that Section 164 of the Evidence Act as well as Order 7 Rule 14(3) of CPC, gives discretion to the trial Court to grant leave to the plaintiff to file the documents at a later stage.

It is further contended by the counsel for the petitioners that under Order 7 Rule 14 of CPC, the leave would be required only at the stage of hearing of suit. In the present case, even issues have not been framed so far, therefore, the trial has not commenced.

Considering the facts and circumstances of the case, this Court is of the view that without entering into the controversy that whether the partition deed can be said to be a document of title or not; and whether the petitioners were under obligation to produce the said partition deed in compliance of order dated 14/06/2016 or not, this Court is of the considered opinion that even if the

documents were not produced in spite of notice, but still the trial Court by exercising its discretion under Section 164 of the Evidence Act, coupled with discretion under Order 7 Rule 14(3) of CPC, can grant leave to the plaintiff to file documents at a later stage. Since in the present case, the trial Court has failed to appreciate the fact that as the issues have not been framed so far, therefore, no prejudice would be caused to the respondents in case if the petitioners are directed to place the documents on record. An attempt should be made to decide the rights of the parties without dismissing the claim on any technical issue (unless warranted), specifically when there is no apparent delay and lapse on the part of the petitioners/plaintiffs as the hearing of the suit has not commenced. Accordingly, this Court is of the considered opinion that the Trial Court should have exercised its discretion in favour of the petitioners and should have permitted the petitioners to file the partition deed. However, as the petitioners have failed to file the partition deed at its earliest, therefore, the respondents can be compensated by awarding cost to the petitioners.

Thus, the order dated 30/08/2017 passed by First Additional Judge to the Court of First Civil Judge, Class-II, Vidisha in COC No. 82-A/2015 is hereby set aside. The application filed by the petitioner under Order 7 Rule 14(3) of CPC seeking leave of the Court to file the partition deed is allowed, subject to payment of

cost of **Rs.5,000/-(Rupees five thousand)** to be paid to the respondents within a period of one month from today. In case, if the petitioners/plaintiffs fail to pay the cost to the respondents/defendants or fail to deposit the cost in the Court, then this order shall automatically lose its effect.

Petition succeeds and is hereby **allowed**.

(G. S. Ahluwalia)
Judge