

Madras High Court

K. Nagarajan vs K.S. Ramasamy, S/O Sennimalai ... on 17 July, 2003

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Bench: S A Kumar

ORDER S. Ashok Kumar, J.

1. The plaintiff is the petitioner. The plaintiff has filed the suit O.S. No. 430/2002 on the file of the District Munsif Court, Karur for permanent injunction against the two defendants - husband and wife.

2. The defendants filed I.A. No. 577/2002 with a prayer to send for certain documents from the custody of the District Court. Along with the application, they also filed a copy of the document called 'complaint' given by the defendants to the Sub-Court, Karur.

3. The plaintiff filed a copy application on 6.11.2002 requesting a copy of the complaint dated 30.10.2002 mentioned in the I.A. No. 577/2002 filed by the defendants. On the same day, the learned Additional District Munsif returned the copy application with the following remark.

'How to petitioner is entitled to get c/c of the document. Since it has not mark.

Sd/ A.D.M.

6.11.2002' Once again on 12.11.2002, the plaintiff represented the copy application with the following endorsement:

'Under Rule 127 of C.R.P. the certificate copy can be obtained without being marked as on exhibit. Hence certificate copy may be issued.

Sd/ 12.11.02.' The learned Additional District Munsif again returned the copy application with the following remark:

'Retd.

This E.A. Retd. on that reffered as above is not applicable to this C.A.

Sd/ A.D.M.

14.11.02.' The rejection of the copy application filed by the learned Additional District Munsif is the cause for this revision petition.

4. The learned counsel for the revision petitioner contends that under Order XI Rule 15 of C.P.C. a party has got the right to inspect any document produced by the opposite party in Court and under Rule 127 of Civil Rules of Practice, the Court is bound to grant copy of the document produced in Court, whether it forms part of the record of the suit or not.

5. The learned counsel for the respondents Ms. Subraja would strenuously contend that under Rule 62 of Civil Rules of Practice only documents referred to in the plaint or written statement and filed along with the above pleadings or thereafter alone can be granted copies if required by the other side and not all the documents filed.

6. Heard the rival contentions of both side and also perused the materials available on record.

7. The complaint dated 30.10.2002 given by the defendants to the Subordinate-Judge, Karur as admitted by the learned counsel for the respondents was to keep the sale agreement produced in previous proceeding in safe custody for the purpose of marking the same in this case also.

8. The learned counsel for the revision petitioner contends that it contains certain defamatory, false and malicious allegations against the plaintiff and probably, the plaintiff may prefer to take legal action for giving such a complaint.

9. We are not concerned about the contents of the complaint or the intention of the complainant. What we are concerned is whether a party is entitled to get the certified copy of a document produced in Court, but not marked and which has not become a part of the record of that case.

10. What is a 'proceeding' has been defined in rule 2(10) of the Civil Rules of Practice and Circular Orders.

'Proceeding' includes all documents presented to or filed in court by any party, or commissioner or other officer of court, other than documents produced as evidence;' Rule 62 of Civil Rules of Practice permits a party to inspect and obtain a copy of any document received or referred to in a plaint or written statement and filed in court therewith or thereafter.

11. In this case the document was not filed either with the plaint or with the written statement, but along with the I.A. petition in I.A. No. 577/2002. The I.A. itself was filed to send for some other documents in which the defendants have enclosed a copy of the complaint dated 30.10.2002 said to have been given to the Subordinate-Judge, Karur. Therefore, it is clear that the complaint dated 30.10.2002 of the defendants have been produced in Court by the defendants themselves along with the I.A. No. 577/2002.

Under Rule 63 of Civil Rules of Practice, 'every party and his pleader desiring to inspect any proceeding filed in court by him or any other party, or a commissioner or officer of court, in the suit, appeal or matter, to which, he, or his client is a party, shall present a memorandum to the chief ministerial officer specifying the proceeding of which inspection is required and inspection will be allowed without the payment of any fee, during the pendency of such suit, appeal or matter.' In Chapter VII while dealing with Copies and Copyists establishment in Rule 127 of Civil Rules of Practice, it is defined as follows:

'When a person is entitled to obtain a copy of a proceeding or document filed in or in the custody of the court, he may present an application therefor to the superintendent of copyists or where there is

no such officer, to the chief ministerial officer in person or by his pleader or the latter's authorised clerk between the hours of 11.30 a.m. and 3.p.m. If the proceeding of document has been sent to another court, the application may at the option of the applicant, be forwarded to the said court for compliance, or be returned to him, for presentation to the said court:

12. So far as this case is concerned, there is no dispute that the petitioner filed an application for grant of certified copy. But, the learned Additional District Munsif, returned the application on the sole ground that it has not been marked. Even after the petitioner resubmitted his application by making endorsement that he is entitled under Rule 127 of Civil Rules of Practice, with the same reason once again the copy application has been returned.

13. In JAGATBHAI PUNJABHAI PALKHIWALA AND OTHERS V. VIKRAMBHAI PUNJABHAI PALKHIWALA AND OTHERS while dealing with such a situation the Gujarat High Court has held as follows:

5. This reason given by the learned Trial Judge is not correct and is too technical. If the inspection of the documents could be granted by the court, there is no reason why the persons who were permitted to take inspection cannot take xerox copy of the same. The purpose of the inspection is to know and study the documents. The person who takes inspection can also take notes and even make copies of the same. In view of very large number of documents, the petitioners wanted that they may be permitted to take xerox copies of the same. Their say is that instead of taking inspection and looking at the documents by their own-eyes, they would like to have their view from the camera eye. The request for xerox copies at their own cost is reasonable. Once the court has granted inspection, this request is merely to make that inspection more effective. By allowing the plaintiffs to take xerox copies, the court is neither verifying nor certifying them to be true and correct copies. The plaintiffs will be taking copies for their own purpose in order that they can make effective and detailed study and have proper consultation with their lawyers. That would not only serve the cause of the petitioners, but will also enable the Counsel to render proper assistance to the court, since the court is not verifying or certifying the correctness of the copies, there is no need of the documents to have become part of the record. Since the documents happen to be in the custody of the court, the parties cannot take xerox copies of the same without permission of the court. But that does not mean that the court can refuse such permission only on the ground that they have not become part of the record. The reason given is fundamentally erroneous and merely technical.

6. If the xerox copies are not permitted to be taken, the purpose of the inspection will become ineffective and would be frustrated. No harm or prejudice can occur to the other side if the xerox copies are permitted to be taken. However, only care is required to be taken to see that while the xerox copies are being taken, an officer of the Court appointed by the trial court remains present and retains the custody of the documents and the representative of the other side is also allowed to remain present so that no allegation is made in future. The cost and remuneration of the court officer appointed for that purpose will have to be borne by the petitioners and the amount will have to be deposited by them as may be quantified by the trial court. The defendants would also be entitled to have the same facility subject to the similar conditions.'

14. In any suit apart from the documents marked, there is likelihood of presence of other unmarked documents like warrant issued to the Commissioner or notice given to the Commissioner by the parties etc. Assuming that a party disputes receipt of notice issued by the Advocate Commissioner, then notice said to have been given by the Commissioner will become an important document and certainly copy of such notice shall be required by the other party who claims that actually notice has been given to the party who disputes it. Though the notice given by the Commissioner to the party may not be a part of the record as far as the suit is concerned, since it is not marked as an exhibit in the suit, still a notice can become necessary for a particular party for which he may require copy. Therefore, the document produced in Court even though not marked as a document in evidence in a suit, still necessity may arise for requirement of a certified copy of such a document. That is why under Order 62 and Order XI Rule 15 of Civil Rules of Practice, it is clearly mentioned that any document produced in Court can be inspected. The terms mentioned in Rule 62 and Order XI Rule 15 of Civil Rules of Practice are wider in nature, in the sense that the documents referred are not only marked but also produced in Court.

15. In the above circumstances, I hold that the order of the learned Additional District Munsif, Karur in rejecting the prayer of the petitioner to grant certified copy of the document produced by the defendants in Court along with the petition in I.A. No. 577/2002 is not correct and the said order is set aside and the learned Additional District Munsif, Karur is directed to give a copy as prayed for.

16. The C.R.P. is allowed. No costs. Consequently, C.M.P. No. 18081/2002 is closed.