

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 13516/2017

Gurjant Singh

----Petitioner

Versus

1. Smt. Amarjeet Kaur

2. The State Of Rajasthan, Through The Sub-Registrar,
Chunawad, Tehsil And District Sri Ganganagar.

----Respondents

For Petitioner(s) : Mr. S.K. Shreemali for Mr. B.S.
Sandhu

For Respondent(s) : Mr. Dixit Panwar for Mr. Rakesh
Matoria

JUSTICE DINESH MEHTA

Order

29/06/2022

1. The instant writ petition under Article 227 of the Constitution of India has been preferred assailing the validity of the order dated 05.10.2017, passed by the learned Additional Civil Judge No.1, Sriganganagar (hereinafter referred to as the "trial Court"), whereby petitioner's application dated 15.11.2016 for summoning certain persons in the witness box has been rejected.

2. Precisely narrated, the facts germane for the present purposes are that the respondent No.1 instituted a suit for declaring the relinquishment deed dated 28.01.2011 as null and void.

3. During the proceedings of the suit, the defendant moved an application dated 15.11.2016, inter-alia, stating that the stamp

vendor - Tulchhiram Sindhi from whom the stamps were purchased and the registering authority - Sub-Registrar, Chunavadh, who had registered the contentious document are necessary witnesses.

4. It was asserted in the application that when requested, those two persons have refused to come to the Court for leading evidence and thus, they be summoned by the Court.

5. A reply to the application aforesaid was filed by the respondent-plaintiff and the request so made by the present petitioner was opposed.

6. After hearing the rival parties, learned Court below rejected petitioner's application dated 15.11.2016, inter-alia, observing that the factum of stamp(s) having been purchased and the registration of relinquishment deed on 28.01.2011 before the Sub-Registrar, Chunvadh is not in dispute and that the applicant has not stated the relevancy and necessity of such witnesses.

7. Oppugning the above referred order dated 05.10.2017, Mr. S.K. Shreemali, learned counsel for the petitioner argued that the learned trial Court has erred in rejecting petitioner's application for summoning stamp vendor and the registering authority.

8. He pointed out that the stand of the petitioner(defendant) was that the plaintiff herself had purchased the stamps and appeared before the registering authority, who in discharge of his official duties, had apprised the plaintiff about the relinquishment deed being executed by her and, therefore, their presence in the witness box is imperative in order to substantiate petitioner's stand.

9. Mr. Dixit Panwar, learned counsel for the respondent No.1 on the other hand submitted that petitioner's subject application is

nothing but an attempt to protract the proceedings. He submitted that in any case the petitioner himself could have brought them in the Court for leading evidence in his favour.

10. It is to be noted that the petitioner-applicant had not mentioned relevant provisions under which he had moved an application seeking summoning of the witnesses but, then, it cannot be a reason to non-suit an applicant.

11. The provisions contained under Order XVI Rule (1) and (2) of the Code of Civil Procedure in unequivocal terms provide that the Court *suo moto* or on an application, can issue summons to a witness to appear in the Court.

12. Sub-rule (2) of Rule 1 of the Order XVI of the Code enjoins upon the party desirous of getting a summon issued to a witness to state in its application the purpose for which the witness is proposed to be summoned.

13. A perusal of subject application dated 15.11.2016 shows that the petitioner had stated that the plaintiff herself had purchased the stamp from the stamp vendor - 'Tulchhiram Sindhi' and thereafter she herself had appeared before the Sub-Registrar, Chunavadh for executing and getting the relinquishment deed registered.

14. Though the application is not well worded but in view of petitioner's stand in his written statement and considering the submissions of learned counsel, this Court is of the view that presence of the stamp vendor and Sub-Registrar is necessary in order to ascertain the veracity of petitioner's stand.

15. The trial Court has not properly considered the mandate of the provisions contained in Order XVI Rule 1 and 2 of the Code and has cursorily rejected petitioner's application indicating that

the applicant has failed to establish the relevancy of the testimony of these two witnesses.

16. According to this Court, while deciding application under Order XVI Rule 1 and 2 of the Code of Civil Procedure, the trial Court is required to prima-facie ascertain the relevancy and requirement of the proposed witnesses. The applicant may be called upon to show relevance or need of such witness(es) but he/she cannot be asked to establish or prove such requirement. The requirement has to be determined by the Court.

17. In the facts of the present case, this Court is of the considered view that the stamp vendor and the then Sub-Registrar are relevant witnesses, who would assist the Court to come to a correct conclusion.

18. As an upshot of the discussion foregoing, the present writ petition is allowed; the impugned order 05.10.2017 is quashed and set aside; petitioner's application dated 15.11.2016 is hereby allowed.

19. The learned trial Court is directed to issue requisite summons to stamp vendor Tulchhiram Sindhi and the then Sub-Registrar, Chunavadh, of course on furnishing requisite cost to be determined by the trial Court.

20. Needful be done within 15 days of furnishing certified copy of the order instant.

21. No order as to costs.

22. Stay petition so also all other interlocutory applications stand disposed of accordingly.

(DINESH MEHTA),J