

ORIGINAL CIVIL.

Before Mr. Justice Davar.

1907
August 19.

KHEISIDAS and LACHMINARAYAN, PLAINTIFFS, v. NAROTUMDAS
GORDHANDAS AND ANOTHER, DEFENDANTS.*

*Civil Procedure Code (Act XLV of 1882), section 59—High Court Rule 162—
Practice—Inspection of documents not referred to in the plaint—Right
of defendant to inspect last documents before filing his written statement.*

Section 59 of the Civil Procedure Code requires a plaintiff to annex to his plaint a list of documents on which he intends to rely at the hearing.

It has heretofore been the practice not to order inspection of documents other than those referred to in the plaint or relied on in the list annexed to the plaint till after the written statement is filed.

This is not an inflexible rule in all cases for there may be many cases where it would be imperative to order the plaintiffs to produce and give inspection to the defendant before he has filed his written statement of a document or documents which they may not have mentioned in their plaint or enumerated in the list of documents annexed thereto.

Summons in Chambers before Davar, J.

The facts are fully set forth in the judgment.

Setavad, for the plaintiffs.

Raikes (acting Advocate General), for the defendants.

DAVAR, J. :—This is a judge's summons taken by the defendants calling, upon the plaintiffs to show cause why they should not "give inspection of the original contracts referred to in para. 3 of the plaint." The defendants have not filed their written statement and they contend that they are entitled to inspection before filing their written statement. The plaintiffs, on the other hand, object to give inspection before the written statement is filed. Our Rule 162, which corresponds with Order xxxi, r. 15, entitles a party to call upon the other side to produce for his inspection any document or documents referred to in the pleadings.

The question is :—Are the documents of which inspection is sought referred to in the plaint? Reference is no doubt made in para. 3 of the plaint to "several contracts," but this particular

paragraph of the plaint is very inartistically worded. The argument before me by counsel has made things much clearer. It seems that the defendants' father gave certain orders for purchase and sale of cotton and linseed which the plaintiffs carried out on his behalf. The plaintiffs have given inspection of the orders given by the defendant's father—they have also given inspection of the entries in their *soda nondhs* purporting to show that they had carried out his orders. Those entries, copies of which were produced before me, refer to certain contracts entered into by the plaintiffs with *other* merchants in putting through the orders of the defendants' father. Inspection is sought of those contracts. I do not think those are the contracts referred to in para. 3 of the plaint.

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The decision of Mr. Justice Farran in *Ram Dayal Saligram v. Nurhurry Balkrishna*⁽¹⁾, based on the decision in *Quilter v. Heatly*⁽²⁾, has long been acted upon in our Court and establishes the right of the defendant to inspect all such documents as the plaintiff refers to in his plaint and mentions as documents on which he will rely at the hearing before the defendants' written statement is filed. Section 59 of the Civil Procedure Code requires a plaintiff to annex to his plaint a list of documents on which he intends to rely at the hearing. The documents of which inspection is sought are not documents included in the list of documents annexed to the plaint enumerating the documents the plaintiffs will rely upon. Technically therefore the defendants are not entitled to claim inspection at this stage of the contracts entered into by the plaintiffs with other merchants in connection with the orders given to the plaintiffs by the defendants' father during his lifetime. As it has heretofore been the practice not to order inspection of documents other than those referred to in the plaint or relied on in the list annexed to the plaint till after the written statement is filed I will follow the practice and must decline to order the inspection that is sought in this summons. I must not, however, be taken as saying that this is to be the inflexible rule in all cases for I can conceive of many cases where it would be imperative to order the plaintiffs to produce and give inspection

(1) (1894) 18 Bom. 368.

(2) (1883) 23 Ch. D. 42.

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to the defendant before he has filed his written statement of a document or documents which they may not have mentioned in their plaint or enumerated in the list of documents annexed thereto.

Before concluding I feel that I ought to say that the action of the plaintiffs in resisting inspection of the contracts mentioned in their *soda vahi* is open to grave adverse comment. The plaintiffs are suing the sons of a constituent of theirs who is now dead. Both the boys were minors when the transaction referred to in the plaint are alleged to have been entered into on behalf of their father and on his account. They know nothing about these transactions except what the plaintiffs choose to tell them. They want more information by means of inspection of documents which, if the entries in the *soda vahi* are truthful, must exist and be in the plaintiffs' possession. This is resisted and I regret to say successfully. In the case before Mr. Justice Farran, referred to above counsel for the defence, in arguing for the plaintiff there, urged that the defendant may alter his defence from the one that he had already indicated if he got inspection of certain letters before filing his written statement. Even this argument is not open to the plaintiffs in this case for the defendants know nothing of the transactions in respect of which they are sued and they require fuller information before they formulate their defence. The plaintiffs will be bound to give inspection of these contracts as soon as the written statement is filed. No reason whatever has been urged before me why the plaintiffs should not produce these contracts for defendants' inspection now. All that is urged before me is, the defendants according to the practice prevailing in this Court is not entitled to inspection of these documents now. Of course this attitude leaves the action of the plaintiffs open to the justifiable comment that these contracts either do not exist at present or that there is something in them, or in connection with them, which is suspicious and requires concealment.

If there had been more candour and less technicality in dealing with the young sons of a dead constituent, the action of the plaintiffs would have reflected more credit on themselves and less suspicion on their transaction.

I dismiss the summons so far as it applies for inspection at present. Costs will be costs in the cause. I certify for counsel. 1907

Attorneys for the plaintiffs:—Messrs. *Malvi, Hiralal, Mody & Ranchhodas*. KHETSIDAS
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Attorneys for the defendants:—Messrs. *Mansukhlal, Jamshetji and Hiralal*.

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ORIGINAL CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

JAN MAHOMED ABDUL LATIFF AND ANOTHER, RELATORS AND APPELLANTS, v. SYED NURUDIN BIN SYED HISAMUDIN RAFAR AND OTHERS, DEFENDANTS AND RESPONDENTS.* 1907
August 6.

Civil Procedure Code (Act XIV of 1882), section 539—Suit by Advocate General at instance of relators dismissed—No appeal by Advocate General—Appeal by relators—Maintainability.

A suit having been brought by the Advocate General he is the proper party to appeal and not the relators. The relators are not parties to the suit and as relators they have no right to step in when the Advocate General, who was plaintiff, has not thought fit to appeal against the dismissal of the suit.

THIS was a suit brought by the Advocate General at the instance of relators under the provisions of section 539 of the Civil Procedure Code.

On the 8th of February 1907 upon motion by the defendants the Court ordered the plaintiff's relators to provide security to the satisfaction of the Prothonotary for the balance of the estimated costs of the defendants within a certain time.

On the 7th March the Court ordered the suit to stand dismissed. A month having elapsed and no real effort made to give security as required against this order the defendants appealed.

Strangman with *Bahadurji* for respondents contended that the appeal was not maintainable because the Advocate General was

* Original Suit No. 773 of 1905, Appeal No. 1482.