Dalip Singh
v.
R. P. Biswas

Gurdev Singh, J.

to the cases instituted on a complaint. At present, I am not called upon to consider, and I am not expressing any opinion on the question whether the same rule applies to cases brought on a police report, for which a different and distinct procedure was introduced by the amendment Act 26 of 1955. In dealing with a similar question, if it arises in a case instituted on a police report, the absence of a provision similar to sub-section (2) of section 252 of the Criminal Procedure Code and the fact that under the amended law the prosecution has to supply copies of the documents upon which it relies and the statement of its witnesses recorded under section 161 of the Criminal Procedure Code will have to be taken into account.

B.R.T.

REVISIONAL CIVIL

Before Inder Dev Dua, J.

JAGIR SINGH,—*Petitioner*

versus

SURJAN SINGH AND 9 OTHERS,—*Respondents*

Civil Revision No. 515 of 1964:

1965

April, 2nd.

Code of Civil Procedure (Act V of 1908)—Order 16 Rule 1—Right of the parties to summon and produce witnesses—Duty of the Court to facilitate production of evidence by the patries to administer justice according to law emphasised—Orders of Courts—Language of.

Held, that Order 16, Rule 1 of the Code of Civil Procedure, 1908, entitles the parties at any time after the suit is instituted to obtain, on an application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents. It is thus clear that a party is, generally speaking, entitled as of right to summonses to witnesses and if an application is made for the purpose, the court has to issue the summonses, though, of course, if the application is belated and the witnesses are for this reason not present, the court is fully competent to decline to adjourn the case for their attendance. Again if the application is not *bona fide* and is an abuse of the process of the Court, then the Court may be held to be possessed of inherent power to refuse to summon the witnesses. The proviso added to

Order 16, Rule 1, by this High Court partially detracts from a party's right to obtain process to enforce the attendance of a witness against whom process has not previously issued and on his right to produce a witness not named in the list filed in Court before actual commencement of the hearing of evidence on his behalf. The party concerned can, however, both obtain such process and produce such witness, as the case may be, if the Court permits him by a written order stating reasons therefor. This the Court has to do in a responsible manner according to law and the rules of reason and justice; the Court indeed is expected to put its mind to the case and use judgment for ascertaining and following the course dictated by reason; in other words, it has to exercise a judicial discretion in the matter which means, to repeat what has often been said, discretion informed by tradition, methodised by analogy, disciplined by system and subordinated to the purpose of promoting the cause of justice. It by no means empowers the Court to do what it likes merely because it is minded so to do. The legal position thus seems to be fairly clear. If a party's case is not covered by the proviso to Rule 1, Order 16, and there is no want of *bona fides* and no abuse of the process of the Court, then the Court would not be justified in refusing to a suitor process for his witnesses, whom otherwise the Court is competent to summon: indeed, it is, generally speaking, a suitor's right to obtain such process and the Court is expected to render in the normal course reasonable assistance in effecting service.

Held, that the provisions of the Code of Civil Procedure, being rules of procedure, are designed as handmaids of substantive law not to hamper or obstruct the course of justice so as to defeat its cause. Courts in this Republic have been constituted to mete out justice according to law, and not for the sole purpose of concluding or ending controversies in dispute between the contestants, regardless of the law and the justice of the case. Justice is generally deemed to lie in the domain of morality and its purpose is considered to maintain or restore an equilibrium in human affairs. Democrarcy believes that the tones of society are numerous and subtle and that it is the function of Justice to blend them as well as it can into a harmonious accord, ultimately fashioning a more satisfying oneness or wholeness through the very differences of the parts. It is perhaps this inspiration which has led our constitution makers, after deep deliberation, to assign to Justice an honoured place in the preamable of the Constitution which sets out consepts vital to our body-politic. It is the legal and sacred responsibility as also the partriotic privilege of the Courts in this Republic to assure that justice is administered strictly in accordance with law with due regard to the interests of all concerned. Judicial institutions do not by themselves suffice to produce justice. What is called administration of justice requires not mere establishment of organs of justice such as Courts of law, but also, what is perhaps more important, that decisions should be arrived at by judicial process, which calls for, *inter alia,* application of judicial mind with a conscientious sense of responsibility and adequate knowledge of law.

Judicial power as contra-distinguished from the power of the laws has no existence in that it is exercised only to give effect to the will or intention of the law, undoubtedly as judicially construed by the Judge, but not the will of the Judge divorced from or unharnessed with law and justice. The will of the Judge is completely gripped by law and dictates of justice, for the only path the judicial mind treads is that of law and justice, any deviation from which forfeits the right to the epithet "Judicial". The sense of our democratic set-up to a large extent depends on the standard of our judicial process; and the depth and strength of the Indian citizens' faith in the administration of justice would go a long way in sustaining, preserving and nourishing free democracy. The standard of the Judicial and legal process of a country largely serves as an index or a barometer of the quality of its civilization; a yardstick with which to measure the orderliness, disciplined co-existence and maturity of mind of the community or the nation as a whole. The uniform quality of the moral texture of our judicial and legal process with its roots in our Republican conception of justice may also tend to serve as an integrating force, and this is perhaps one reason the more for sustaining and nourshing it. It thus follows that if our judicial process fails or deteriorates by becoming infirm in any fundamental respect, it may endanger our entire democratic set-up; to preserve the requisite standard of the administration of justice is accordingly the patriotic duty of every good citizen, of course, more directly of the judicial officers. The strength of the judiciary lies in the command it has over the hearts and minds of men and this in turn depends on its intrinsic qualities of efficiency, impartiality and conscientious responsiveness to the cause of justice.

Held, that the judicial orders of Courts should, if they are to inspire confidence and faith of the suitors and the public, appeal to a genuine sense of justice by the sheer force of their logic, rationable and self-integrated honesty. The Courts are, therefore, broadly speaking, expected to frame their orders affecting the rights of the litigating parties in suitable language, keeping in view this somewhat important matter. Also when an *Ahlmad* chooses to record some note in the form of an order on the judicial file in the absence of the Presiding Officer of the Court, he should take care to express himself in proper, dignified, respectful and courteous language becoming of a responsible officer of a Court of law and justice, and avoid using expressions like "P.O. absent". This Court disapproves the use of such langauge.

Petition under section 44 *of Act VI of* 1918 *and section* 115 *Civil Procedure Code for revision of the order of Shir Brij Mohan, Sub-Judge, 1st Class, Zira, dated* 24*th July,* 1964, *refusing to permit the plaintiff to examine his witnesses other than Surjit Singh and Hira Singh who were present on* 24*th July*, 1964. *The case for their examination was adjourned to* 29*th August,* 1964.

S. S. MAHAJAN, ADVOCATE, for the Petitioner.

NEMO, for the Respondents.

JUDGMENT

DUA, J.—This is a plaintiff's revision from an interlocutory order dated 24th July, 1964, of Shri Brij Mohan, learned Subordinate Judge, 1st Class, Zira, in effect refusing to permit the plaintiff to examine his witnesses other than Surjit Singh and Hira Singh who were present on 24th July, 1964. The case for their examination was adjourned to 29th August, 1964. The impugned order of which a certified copy has been filed and the original of which I have also seen from the record, is so worded that I find it difficult to follow it or to make any sense out of it except by resorting to guess-work. The language of the order defective as it is, literally construed conveys no clear or coherent idea. It, however, appears that presumably the learned Subordinate Judge did not allow witnesses other than the two mentoined above to be examined because according to the learned Subordinate Judge their names had not been clearly specified. Even so, it is difficult to understand as to why the third witness Jagir Singh who was also present was not allowed to be examined on the next date of hearing. Kabul Singh and Chhur Singh were, however, examined on 24th July, 1964, before adjourning the case. Dua, J.

From the record it is quite clear that on 1st October, 1963, the plaintiff had applied for summoning five witnesses including the Civil Surgeon, Incharge of Civil Hospital, Ferozepur, Dr. D. D. Puri, Assistant Surgeon Incharge of the same hospital, Kirpal Singh, Piare Lal, S.H.O., Railway Station, Ferozepur and Kabul Singh, A.S.I., Police Station, and a sum of Rs. 115 was deposited as expenses for these witnesses. I also find a list of 14 witnesses filed by the plaintiff on 20th December, 1963. The suit, it may be pointed out, had been instituted on 20th August, 1962 and issues were framed on 25th September, 1963, the next date for evidence being 23rd October, 1963. From this, it is obvious that within five days of the framing of the issues, list of witnesses and the process-fee was put in by the plaintiff. On 23rd October, 1963, there was recorded a note, presumably by the Ahlmad, that the Presiding Officer had been transferred. The case was accordingly directed to come up for necessary orders on 30th October, 1963. On that date also a

Jagir Singh
v.
Surjan Singh
and 9 others

Dua, J.

note was recorded by the Ahlmad that the Presiding Officer had been transferred, with the result that the case was directed to come up on 23rd November, 1963, for necessary orders. On 23rd November, 1963, it was adjourned to 21st December, 1963. On that date again, the Presiding Officer was supposed to be on leave and the case was directed to come up on 30th December, 1963, on which date again the Presiding Officer was on leave and the case was directed to come up for necessary orders on 30th January, 1964. On 30th January, 1964, as the order shows, the record of the case was not before the Court. It was accordingly adjourned to 21st February, 1964. For the same reason again the case was adjourned on 21st February, 1964 to 24th March, 1964. On 24th March, 1964, the plaintiff's witnesses were not present with the result that the Court adjourned the case to 29th April, 1964 on payment of Rs. 10 as costs, directing that the plaintiff should bring his witnesses on his own responsibility. On 29th April, 1964, again the Presiding Officer was not present, presumably having gone on tour. Apparently, the Reader directed the case to come up on 29th May, 1964 for necessary orders. On that date the case was adjourned to 24th July, 1964, with a direction to the parties to bring their witnesses on their own responsibility. The above resume of the proceedings clearly shows that the trial of this case has been far from satisfactory reflecting little credit on our judicial process, and the parties were hardly to blame for this delay; certainly not the plaintiff. The reasons given by the learned Subordinate Judge in the impugned order are also difficult to appreciate. But what is completely beyond my comprehension, and seems to be almost indefensible in law, is, that when the case was being adjourned by the trial Court to 29th August, 1964, because the Court was, as is quite clear on the record, desirous of recording evidence in other cases, in preference to the present one, although, admittedly at least three witnesses were actually present, why should the examination of the other witnesses for the plaintiff have been completely shut out. This course appears to be unwarranted and legally unsupportable. Rules of procedure, as has so frequently been pointed out by this Court, are designed to facilitate justice and further its ends. They are not meant to punish or penalise the suitors or to trip them up by hampering the cause of justice; and if the case was to be adjourned by the Court on 24th July, 1964

to the next date of hearing, more than a month later, for examination of some of the plaintiff's witnesses, I fail to see any legal justification, far less propriety, for restricting the plaintiff's evidence to only two witnesses mentioned in the impugned order.

I consider it necessary now to notice the correct legal position on the subject. Order 16, Rule 1, Code of Civil Procedure, entitles the parties at any time after the suit is instituted to obtain, on an application to the Court or to such officers as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents. According to the proviso added by this High Court, no party who has begun to call his witnesses is entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to produce any witness not named in a list, which must be filed in court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence, without an order of the Court made in writing and stating reasons therefor. Ignoring for the moment the proviso added by this Court, it would seem clear that a party is, generally speaking, entitled as of right to summonses to witnesses, and if an application is made for the purpose, the Court has to issue the summonses, though of course, if the application is belated and the witnesses are for this reason not present, the Court is fully competent to decline to adjourn the case for their attendance : *Sardari Lal, etc.*, v. *Mohar Singh, etc.* (1). It may be conceded as held in *Mst. Lalifannissa* v. *Alimulla* (2), that if the application is not *bona fide* and is an abuse of the process of the Court, then the Court may be held to be possessed of inherent power to refuse to summon the witnesses, but that clearly is not the case before me. The Lahore High Court added the above proviso in October, 1932, which partially detracts from a party's right to obtain process to enforce the attendance of a witness against whom process has not previously issued and on his right to produce a witness not named in the list filed in Court before actual commencement of the hearing of evidence on his behalf. The party concerned can, however, both obtain such process and produce such

(1) A.I.R. 1925 Lah. 67.
(2) A.I.R. 1929 Pat. 622.

Jagir Singh
v.
Surjan Singh
and 9 others

Dua, J.

witness, as the case may be, if the Court permits him by a written order stating reasons therefor. This the Court has to do in a responsible manner according to law and the rules of reason and justice: the Court indeed is expected to put its mind to the case and use judgment for ascertaining and following the course dictated by reason: in other words, it has to exercise a judicial discretion in the matter which means, to repeat what has often been said, discretion informed by tradition, methodised by analogy, disciplined by system and subordinated to the purpose of promoting the cause of justice. It by no means empowers the Court to do what it likes merely because it is minded so to do. Rule 1-A of Order 16, it may be noted, empowers a party to produce his witnesses without applying for summonses under Rule 1 by filing a list of such persons on or before the day fixed for the hearing of evidence and bringing them to Court. Rule 16(1) provides that a person summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit is disposed of and under sub-rule (2) such a person may be required to attend at the next or any other hearing or until the suit is disposed of; sub-rule (3) added by this High Court makes a provision for the exercise of the power conferred by sub-rule (2) in the absence of the Presiding Officer of the Court. According to the proviso to sub-rule (2) of Rule 1 of Order 17, when the hearing of evidence has once begun, the hearing of the suit is to be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded. Sub-rule (3) added by this High Court says that when sufficient cause is not shown for the grant of an adjournment under sub-rule (1), the Court shall proceed with the suit forthwith. Judges should thus always endeavour to hear the evidence on the date fixed, as much expenses and inconvenience is caused by postponements ordered on insufficient grounds before the witnesses in attendance have been heard: see paragraph 14, Chapter 1-H, P. 40, High Court Rules and Orders, Volume I.

The legal position thus seems to be fairly clear. If a party's case is not covered by the proviso to Rule 1, Order 16, and there is no want of *bona fides* and no abuse of the

process of the Court, then the Court would not be justified in refusing to a suitor process for his witnesses, whom otherwise the Court is competent to summon: indeed, it is, generally speaking, a suitor's right to obtain such process and the Court is expected to render in the normal course reasonable assistance in effecting service.

At this stage, it may appropriately be pointed out that the provisions of the Code of Civil Procedure, being rules of procedure, are designed as handmaids of substantive law not to hamper or obstruct the course of justice so as to defeat its cause. Courts in this Republic have been constituted to mete out justice according to law, and not for the sole purpose of concluding or ending controversies in dispute between the contestants, regardless of the law and the justice of the case. Justice is generally deemed to lie in the domain of morality and its purpose is considered to maintain or restore an equilibrium in human affairs. Democracy believes that the tones of society are numerous and subtle and that it is the function of Justice to blend them as well as it can into a harmonious accord, ultimately fashioning a more satisfying oneness or wholeness through the very differences of the parts. It is perhaps this inspiration which has led our constitution-makers, after deep deliberation, to assign to Justice an honoured place in the Preamble of the Constitution which sets out concepts vital to our body-politic. It may not be inapt at this stage to reiterate the view expressed by me in *Arjan Singh* v. *Hazara Singh*, C.R. 479 of 1963, decided on 26th March, 1965, that it is the legal and sacred responsibility as also the patriotic privilege of the Courts in this Republic to assure that justice is administered strictly in accordance with law with due regard to the interests of all concerned. Judicial institutions, as I have said before, do not by themselves suffice to produce justice. What is called administration of justice requires not mere establishment of organs of justice such as Courts of law, but also, what is perhaps more important, that decision should be arrived at by judicial process, which calls for, *inter alia*, application of judicial mind with a conscientious sense of responsibility and adequate knowledge of law. Judicial power as contra-distinguished from the power of the laws has, in my view, no existence, in that it is exercised only to give effect to the will or intention of the law, undoubtedly as judicially construed by the Judge, but not the will of the

Jagir Singh
v.
Surjan Singh
and 9 others

Dua, J.

Judge divorced from or unharnessed with law and justice. The will of the Judge is completely gripped by law and dictates of justice, for the only path the judicial mind treads is that of law and justice any deviation from which forfeits the right to the epithet "judicial". I should also add that the sense of our democratic set-up to a large extent depends on the standard of our judicial process; and the depth and strength of the Indian citizens' faith in the administration of justice would go a long way in sustaining, preserving and nourishing free democracy. Speaking for my part, I am inclined to the view that the standard of the judicial and legal process of a country largely serves as an index or a barometer of the quality of its civilization: a yardstick with which to measure the orderliness, disciplined co-existence and maturity of mind of the community or the nation as a whole. The uniform quality of the moral texture of our judicial and legal process with its roots in our Republican conception of Justice may also tend to serve as an integrating force, and this is perhaps one reason the more for sustaining and nourishing it. It thus follows that if our judicial process fails or deteriorates by becoming infirm in any fundamental respect, it may endanger our entire democratic set-up: to preserve the requisite standard of the administration of justice is accordingly the patriotic duty of every good citizen, of course, more directly of the judicial officers. The strength of the judiciary, it is worth remembering, lies in the command it has over the hearts and minds of men and this in turn depends on its intrinsic qualities of efficiency, impartiality and conscientious responsiveness to the cause of justice. I have felt constrained to make these observations because of having lately discerned in some instances somewhat disturbing weakening of the fabric of our judicial and legal process and I feel that this Court should not be complacent in this matter of vital importance to our set-up.

There now remains the matter of language of orders of Courts to which, I am afraid, I must turn before finally closing this judgment. The judicial orders of Courts in this Republic should, if they are to inspire confidence and faith of the suitors and the public, appeal to a genuine sense of justice by the sheer force of their logic, rationale and self-integrated honesty. The Courts are, therefore, broadly speaking, expected to frame their orders affecting the rights of the litigating parties in suitable language,

keeping in view this somewhat important aspect. In the present case, it has apparently been ignored. Another allied matter to which I consider it proper to draw the attention of the Court below is that when an *Ahlmad* chooses to record some note in the form of an order on the judicial file in the absence of the Presiding Officer of the Court, he should take care to express himself in proper, dignified respectfull and courteous language becoming of a responsible officer of a Court of law and justice, and avoid using expressions like "P.O. absent". This Court disapproves the use of such language.

In view of the foregoing discussion, I am unable to uphold the order of the Court below which is not only contrary to law and tainted with material irregularity in the exercise of jurisdiction but is also manifestly and patently unjust. I would accordingly set aside the impugned order and send the case back to the Court below for further proceedings in accordance with law and in the light of the observations made above. The petitioner has been directed to appear in the Court below on 3rd May, 1965, when the parties would be summoned after a short date for further proceedings. As there is no representation on behalf of the respondents in this Court, there would be no order as to costs.

B.R.T.

APPELLATE CIVIL

Before S. S. Dulat and D. K. Mahajan, J.J.

BHUPINDER SINGH, —*Appellant*

versus

SURINDER KAUR AND ANOTHER,—*Respondents*

Second Appeal from Order No. 45 of 1963.

1965

Apirl, 5th.

Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Effect of —Pre-emptor already owning land which, together with the land pre-empted, will exceed permissible area—Whether entitled to obtain pre-emption decree—Matter relating to violation of S. 19-A—When to be decided.