

FORM NO.HCJD/C  
JUDGMENT SHEET  
IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD

JUDICIAL DEPARTMENT

**C.R. No. 160 of 2017.**

**Malik Riazullah.                      Versus                      Mst. Dilnasheen, etc.**

*Date of hearing:*                      *02.01.2018.*

*Petitioner by:*                      *Sh. Muhammad Khizar-ur-Rashid, Advocate.*

*Respondents by:*                      *Mr Abdur Rashid Awan, Advocate for the respondent no.1.*

*Mr Abdul Shakoor Paracha and Ms Wajiha Pervaiz, Advocates for the respondent / CDA.*

**Athar Minallah, J:**

This civil revision is directed against order, dated 16.03.2017, passed by the learned Civil Judge Ist Class (West), Islamabad, whereby the application filed by the petitioner seeking documents to be de-exhibited was dismissed.

2. The facts, in brief, are that Malik Riazullah and Ms Dilnasheen are siblings (the former hereinafter will be referred to as the "**Petitioner**" while the latter as the "**Respondent**"). The dispute between the parties is in respect of rights of succession as legal heirs arising out of the estate left behind by the predecessor-in-interest namely Malik Nasrullah Khan (late). The Respondent filed a suit on 14.10.2006, seeking declaration, cancellation of documents, ~~per~~ permanent and mandatory injunction, possession through

partition and recovery of mesne profit. The plaint was amended twice i.e. on 19.10.2006 and 15.05.2014 respectively. The suit was contested by the Petitioner and, out of the divergent pleadings, the learned trial Court framed ten issues vide order dated 10.10.2015. On 06.02.2016 the first witness entered the witness box in support of the claim of the Respondent / Plaintiff. During his examination-in-chief, the said witness produced documents which were marked as exhibits i.e. Ex.P.1 to Ex.P.67 and placed on record. Almost all these documents were part of judicial record/proceedings and were duly attested by the respective courts / forums. A few of the documents were not declared as exhibits and were only placed on record as 'mark'. An application was filed on behalf of the Petitioner on 13.07.2016, wherein it was prayed that the documents described in paragraph no.3 thereof be de-exhibited. The said application was dismissed by the learned trial Court vide the impugned order dated 16.03.2017.

3. Sh. Muhammad Khizar-ur-Rashid, ASC, the learned counsel for the Petitioner has contended that; the documents were admitted in evidence in violation of the conditions prescribed under Order XIII Rule 1 and 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "**CPC**"); the documents were admitted in evidence and marked as exhibits in the absence of the learned counsel for the Petitioner; the documents were neither produced with

the plaint nor mentioned in any other document; under Order XIII Rule 3 of CPC, the learned trial Court is vested with power and jurisdiction to de-exhibit / reject irrelevant documents; the documents which are neither produced with the plaint nor relied upon in the list of witnesses are not admissible, being irrelevant. Reliance has been placed on the cases titled "*Muhammad Ashraf versus Muhammad Tahir Ismail and others*" [2011 MLD 1848] and "*Nazir Ahmad and 05 others versus Ittefaq Textiles Mills Ltd. Lahore and another*" [2007 MLD 1311] in support of the argument that the trial court is vested with jurisdiction to de exhibit documents which have been admitted in evidence; the documents were exhibited illegally; the documents were in the possession of the Respondent at the time of filing the amended plaint i.e. on 10.05.2014; the documents do not comply with the requirements of Article 79 of the Qanoon-e-Shahadat Order, 1984 (hereinafter referred to as the "**Order of 1984**"); the documents are private documents which have yet to be proved; the procedure prescribed under Order XIII Rule 2 of CPC was not followed; the learned trial Court failed to exercise its jurisdiction; it was incumbent on the Respondent under Order VII Rule 14 of the CPC to attach with the plaint all such documents which were to be relied upon; the documents were produced and admitted in evidence by taking advantage of the absence of the learned counsel; the documents are irrelevant in relation ~~to~~ the framed issues; valuable rights and interests of the

Petitioner are involved; no application was filed under Order XIII Rule 1 and 2 of the CPC seeking leave of the Court; a certified copy of the document marked as Ex.P.48 was not produced; Article 19 of Order of 1984 is not attracted; objections had been raised when the documents had been submitted by the witness during the course of recording his examination-in-chief; the documents marked as Ex.P.35 and 48 are private documents and are yet to be proved.

4. Mr Abdur Rashid Awan, ASC, has appeared on behalf of the Respondent no.1 and has argued that; the Petitioner has denied refusing to give the Respondent her share of inheritance; the Petitioner had fraudulently and through forged documents transferred a valuable property in his own name; the Petitioner has tried his best to delay the conclusion of the trial which is evident from the fact that the suit was filed eleven years ago and is still pending; on 06.02.2016, examination-in-chief of PW.1 was recorded in the presence of the associate of the learned counsel; the Petitioner's son, who is also enrolled as an advocate, was present and has raised objections; most of the documents produced by the PW.1 and admitted in evidence as Ex.P.1 to Ex.P.16 are part of the judicial record; a belated application was filed merely to delay the conclusion of the trial; the petition under section 115 of the CPC is not maintainable against an injunctive order; there is no provision for de-exhibiting documents which have been admitted in evidence

and marked as exhibits; the Petitioner has not contested the genuineness of the documents.

5. The learned counsels for the parties have been heard and the record perused with their able assistance.

6. The admitted facts are that after framing of issues the first witness, namely Nazir Muhammad, son of Malik Atta Khan appeared as PW.1 on 06.02.2016 and his examination-in-chief was recorded. During recording of his deposition he produced documents which were not appended with the plaint nor had been produced before 06.02.2016. The learned counsels who were present at the time of recording of the examination-in-chief of PW.1 had objected to some of the documents which were produced. Later an application was filed belatedly praying therein that the documents described in the said application be de-exhibited. The application was dismissed by the learned trial Court vide the impugned order, dated 16.03.2017. It is also an admitted position that most of the documents are part of judicial proceedings and have been duly attested by the respective courts / forums. Two questions have arisen, firstly, whether the dismissal of the application tantamounts to material irregularity or illegality and, secondly, whether once documents have been made part of the record relating to the trial and marked as 'exhibits' then may they be de-exhibited or, in other words, removed from the record. In

order to answer the questions it would be beneficial to examine the relevant provisions of the CPC.

7. Order VII of the CPC deals with the plaint and Rule 14 thereof provides that where a plaintiff sues upon a document in his possession or power then it is incumbent on the latter to produce it in the Court when the plaint is presented. Sub-rule(2) of Rule 14 of Order VII provides that where a plaintiff relies on any other documents, whether or not in his possession or power, as evidence in support of his claim then such documents are required to be entered in a list to be added or annexed to the plaint. Rule 18 mandates that a document which ought to have been produced in the Court by the plaintiff when the plaint is presented or to be entered in a list or annexed to the plaint and which is not so produced or entered, then the same shall not be received in evidence at the time of hearing of the suit without the leave of the Court. Sub-rule (2) of Rule 18 specifies the documents regarding which sub-rule (1) of Rule 18 is not attracted. Rule 1 of Order VIII provides that the defendant may and, if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Order XIII describes the procedure in respect of the production, impounding and return of documents. Sub-rule (1) of Rule 1 of Order XIII provides that the parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every

description in their possession or power on which they intend to rely and which has not already been filed in Court and all documents which the Court has ordered to be produced. Sub-rule (3) of Rule 1 of Order XIII contemplates that on production of documents the Court may call upon the parties to admit or deny the documents produced in the Court and record their admission or denial, as the case may be. Rule 2 of Order XIII explicitly explains the effect of nonproduction of documents as required under Rule 1 and provides that no documentary evidence in the possession of any party which should have been but has not been produced in accordance with the requirements *ibid* shall be received at any subsequent stage of the proceedings unless 'good cause' is shown to the satisfaction of the Court for the non production thereof and the Court receiving any such evidence shall record its reasons in this regard. Rule 3 contemplates that the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds thereof. Rules 4, 5 and 6 relate to endorsements which are required to be made on the documents. Rule 8 empowers the Court to impound the document and Rule 9 prescribes the procedure for returning admitted documents.

8. A combined reading of the above provisions shows that the documents which are in the possession and power of a plaintiff are required to be produced along with the

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plaint at the time of its filing. Documents are of two categories, those upon which the claim is filed and those which are relied upon. There are two relevant stages relating to bringing the documents on record. The first stage is to produce or file a document and the second when it is tendered in evidence. As a general rule the documents are required to be produced at the time of filing of the plaint. However, in any case documents are required to be produced at the first hearing. The expression 'first hearing' has been interpreted as meaning the date when issues are framed under Order XIV of CPC. Between filing of the plaint and the first hearing leave of the Court is required to produce a document which was not appended with the plaint. Nonetheless, a document can be produced even after the first hearing if good cause can be shown to the satisfaction of the Court for failure to do so. In a nut shell documents can be filed under Order VII, Rule 14 along with the plaint or written statement or under Order XIII, Rule 1 at the first hearing of the suit. There is no absolute bar regarding producing a document at a subsequent stage because Order XIII Rule 2 empowers the trial Court to receive a document even after the stage of first hearing provided good cause is shown to its satisfaction. The Court may, however, 'reject' a document at any stage which is found irrelevant or inadmissible. The legislative intent in vesting discretion in a court to receive documents in evidence and making them part of the record is obvious

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from reading the above provisions together. Discretion is, therefore, vested in the trial Court to extend the time for producing documents even after the first hearing. Reliance is placed on the case titled "*Ghulam Qadir and another versus Mst. Kundan Bibi and another*" [1991 SCMR 1935]. There is also no requirement for filing a formal application so as to seek leave of the Court in order to produce a document. Documents for the purposes of evidence are of two types i.e. primary or secondary. Depending on the nature of the document tendered during deposition by a witness, it may be received in evidence marked as exhibit or placed on record as a 'mark'. The latter category of document cannot be relied upon as has been held by the august Supreme Court in the case titled "*State Life Insurance Corporation of Pakistan versus Javaid Iqbal*" [2011 SCMR 1013]. However, a document once received in evidence and marked as an exhibit can by no stretch of the imagination be treated as having been proved nor its status being genuine. Marking a document as an 'exhibit' does not give finality to its evidentiary value.

9. It is settled law that receiving a document in evidence and marking it as an exhibit does not debar the other party from questioning its admissibility later. Likewise, merely exhibiting a document does not dispense with the onus to prove the same. Reliance is placed on the cases titled "*Sitaram versus Ram Charan and others*" [AIR 1995 Madhya

*Pradesh 134]* and *"Benamali Das versus Rajendra Chandra"* [AIR 1975 S.C. 1865]. It is, therefore, axiomatic that admitting a document in evidence does not determine its evidentiary value nor does its admissibility attain finality. It only becomes part of the record and is marked as an exhibit. It has been held and observed by the august Supreme Court in the case titled *"Anwar Ahmad versus Mst. Nafis Bano through Legal Heirs"* [2005 SCMR 152] that non-filing of documents along with the plaint is not fatal in the view of the provisions of Order XIII Rule 2 of the CPC which empowers the Court to receive documentary evidence during the trial. It would also be pertinent to refer to the judgment of the august Supreme Court in the case titled *"Rab Nawaz and 8 others versus Muhammad Amir and another"* [1999 SCMR 951], wherein it has been held and observed as follows:-

*"We have not been impressed by either of these contentions. Under Rule 1 of Order XIII of the CPC the petitioners were required to have produced at the first hearing of the suit all the documentary evidence of every description in their possession or power on which they intended to rely which were already filed in Court. The only exception is provided in Rule 2 of Order XIII (ibid), which lays down that no documentary evidence in possession or power or any party which should*

*have been but has not been produced in accordance with the requirement of Rule 1, shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for non-production thereof and the Court receiving any such evidence shall record the reasons for so doing. It would, thus, be noticed that a good cause has to be shown to the satisfaction of the trial Court for non-production of the documents”.*

10. It is, therefore, obvious from the above that the object of Order VII Rule 14 read with Rule 18 and Order XIII Rules 1 and 2 of CPC is to prevent a party from producing documents after filing of the plaint or the first hearing so as to safeguard the other party against miscarriage of justice or that the latter is not prejudiced in his or her defence. It is settled law that the object of the aforementioned provisions is to obviate the possibility of presenting forged or suspicious documents at a later stage, particularly when issues have already been framed. This object is mainly aimed at ensuring that private documents are not introduced at a later stage so that the other party is not taken by surprise. However, in case of certified documents which fall within the scope of the expression 'public documents' the bar of showing a good cause for their production after the first hearing may not be at par with private documents.

Nonetheless, the learned trial Court has to be satisfied that there was a good cause for not producing the documents earlier and that this consideration necessarily has to be in the context of ensuring that the other party is not prejudiced and that the sanctity or integrity of a fair trial remains protected.

11. In the instant case, most of the documents are copies which have been certified by respective courts and are part of its record. As already noted above, no prejudice would be caused to the Petitioner if the documents remain part of the record in the instant suit. The admissibility of its evidentiary value and whether or not they can be relied upon has not attained finality merely because they have been received in evidence and have been marked as 'exhibits'.

12. The learned counsel for the Petitioner has laid great stress on Rule 3 of Order XIII of the CPC in support of his contention that the learned trial Court is vested with the power to de-exhibit documents or, in other words, have them altogether removed from the record after they have been received in evidence and marked as exhibits. Such documents may become part of the record though the question of their evidentiary value remains open to challenge. The expression 'de exhibit' is not defined nor mentioned in the CPC. The above discussed provisions refer ~~to~~ the expressions 'receive' or 'produce'. Rule 3 of Order XIII

refers to the rejection of irrelevant or inadmissible documents. The scheme of the above mentioned provisions and the legislative intent does not envisage the removing of documents from the record after they have been received or allowed to be produced and thereafter marked as 'exhibits' except under Rule 9 of Order XIII. There is no provision in the CPC for removing a document from the record which has been marked as an 'exhibit'. De exhibiting or removing from the record of the trial Court is alien to the provisions of the CPC. As already noted, merely receiving a document and making it part of the record does not give finality to its evidentiary value and, therefore, by no stretch of imagination does it prejudice the right to a fair trial. The provisions of the CPC are tools for ensuring a fair trial. If documents were allowed to be de exhibited then, despite not causing prejudice to the other party, it would be used for delaying adjudication of the suit. This definitely would have provided an opportunity to delay the proceedings besides the exercise being futile. Rejection of documents under Rule 3 Order XIII of CPC is before receiving or marking them as exhibits. The expression 'de exhibit' or power vested in the trial Court in this regard would be reading in the CPC something not provided therein by the legislature.

13. In the instant case, the learned trial Court has placed reliance on Article 90 of the Order of 1984 and after perusal

of the documents has dismissed the application wherein it was prayed that the documents be de exhibited. The learned trial Court has recorded reasons for its satisfaction regarding good cause having been shown for exhibiting the documents which were produced by the witness. The discretion exercised by the learned trial Court has not been found perverse, arbitrary, capricious or fanciful. Moreover, as noted above, there is no provision for de exhibiting documents and removing them from the record once they have been received and marked as exhibits. In any case, no prejudice would be caused to the Petitioner nor would his right to a fair trial be compromised if the documents exhibited as Ex.P.1 to Ex.P.69 remain part of the record. The evidentiary value of the said documents is open to be questioned and has not attained finality. The application filed by the Petitioner, wherein it was prayed that the documents be de exhibited, was misconceived.

14. It would be pertinent to refer to the judgment of the august Supreme Court titled as *"Nawabzada Malik Habibullah Khan versus The PAK. Cement Industries Limited and others"* [1969 S.C. 965] and the relevant portion thereof is as follows;-

*"An order admitting or declining to admit evidence oral or documentary does not amount to a 'case decided' within the purview of section 115 CPC. The High Court could not, therefore, interfere*

*with the order of the trial Court in exercise of its revisional jurisdiction. A fortiori no appeal from the order of the High Court would lie to this Court”.*

15. The impugned order, in fact, has been passed dismissing the application challenging the act of the learned trial Court whereby documentary evidence was admitted. It is settled law that what cannot be done directly can also not be done indirectly. Reliance is placed on the cases titled "*Muhammad Anwar, etc versus Mst. Ilyas Begum, etc*" [PLD 2013 S.C. 255]. Without prejudice to the above discussion on merits the instant petition even otherwise was not maintainable. On merits no legal infirmity has been found so as to interfere with the impugned order, dated 16.03.2017. However, it will be open to the Petitioner to question the admissibility and evidentiary value of the documents which have already been made part of the record and have been marked as exhibits.

16. The petition, however, is without merit and, therefore, accordingly ***dismissed with costs***.

17. Before parting it may be observed that the dispute between the parties is in relation to their hereditary rights. The suit was filed in the year 2006 and despite lapse of

eleven years it remains pending. This Court expects that the learned trial Court would ensure expeditious disposal of the suit. The parties are also expected not to delay the proceedings so that the learned trial Court may determine their respective rights. Needless to mention that vide Notification, dated 23.02.2018, the Costs of Litigation Act, 2017 has been enforced with effect from 01.03.2018. It is the duty and responsibility of the learned trial Court to give effect to the legislative intent in letter and ~~A~~ spirit. \_\_\_\_\_

**(Athar Minallah)**  
**Judge**

*Announced in the open Court on 03.04.2018.* \_\_\_\_\_

**Judge**

Approved for reporting.

*Asad K/\**