

PODIRALAHAMY

v.

RAN BANDA

COURT OF APPEAL
PALAKINDNAR, J. AND
SENANAYAKE, J.
CA NO. 838/82 (F)
MAY 15, 1991.

Documents – Duty to give documents produced in evidence a distinguishing mark – Duty of court to retain marked documents.

Held :

There is a duty on Court to take the documents tendered and marked at the trial to its custody and keep them filed of record. Documents marked in evidence become part of the record.

APPEAL from judgment of the District Judge of Kurunegala.

Rohan Sahabandu for 1st defendant-appellant.

K. Balapatabendi for plaintiff-respondent.

Cur. adv. vult.

May 23, 1991.

SENANAYAKE, J.

The learned Counsel for the defendant-appellant submitted that the learned District Judge had failed to consider the documents tendered in evidence by the defendant-appellant. The defendant-appellant's documents have not been tendered to Court. The learned District Judge had not referred to the documents in his judgement nor has he called for the documents that were led in evidence as D¹ to D¹⁰.

There is force in the submission of the learned Counsel for the defendant-appellant ; section 114 subsection (2) of the Civil Procedure Code reads as follows :-

"Every document so proved or admitted shall be endorsed with some number or letter sufficient to identify it. The Judge shall then make an entry on the record to the effect that such document was proved against or admitted by the person against whom its used and shall in such entry refer to such document by such

number or letter in such a way as to identify it with the document so proved or admitted. The document shall then be filed as part of the record. "

There is a duty cast on the Court once the document is admitted and endorsed with a letter to identify it that the Court should have the custody of the documents so marked and identified, though the original Courts for convenience return the documents to Attorneys of the respective parties to tender the documents if necessary after being stamped with an accurate list of the documents.

The provision of section 154 (3) reads as follows :-

" The document or writing being admitted in evidence the Court, after marking it with a distinguishing mark or letter by which it should when necessary be ever after referred to throughout the trial.".....

The explanation to the subsection reads as follows :-

" Whether the document is admitted or not it should be marked as soon as any witness makes a statement with regard to it and if not earlier marked on the account, it must at least be marked when the Court decides upon admitting it ".

In the instant case the defendant-appellant's documents D¹ to D¹⁰ were not only marked but also led in evidence without any objection from the opposing party. Those documents have been admitted ; therefore the Court in terms of the provisions of section 114 (3) should have kept them in its custody. If for convenience the Court had allowed the Attorney-at-Law to the defendant-appellant to retain the documents during the trial, there was a duty cast on the learned District Judge to call for the documents.

The learned Counsel for the appellant cited an unreported authority CA/SC No. 63/76 (F) DC Kurunegala No. 357/L CA minutes of 25.10.1984, where Justice Atukorala observed : " we are of the view that documents once marked in evidence become part of the record and should remain in the custody of Court. "

In the instant case the learned District Judge had allowed the Attorney-at-Law to retain the documents marked and produced in evidence at the trial. I am of the view that he cannot delegate his obligations to others. There was a duty on Court to take the documents tendered and marked at the trial to its custody and keep them filed of record but he had failed to do so. He even at the subsequent stage had failed to call for the documents with an accurate list of the documents.

I am of the view that the learned District Judge had failed to give his Judicial mind to the documents led in evidence by the defendant-appellant.

For these reasons and in the interest of Justice, I set aside the judgment and decree of the learned District Judge and send the case back for trial *de novo*. The defendant-appellant will however pay the plaintiff-respondent a sum of Rs.1,050 as costs of the abortive trial and as costs of the Appeal. The learned District Judge is directed to hear and dispose of this case as early as possible.

PALAKIDNAR, J. – I agree.

Judgment set aside

Case sent back for trial de novo