

## APPELLATE CIVIL.

*Before Mr. Justice Wallace.*1924,  
April 4.

K. V. RAMACHARI (FIRST DEFENDANT) PETITIONER,

v.

K. V. KRISHNAMACHARI AND ANOTHER (PLAINTIFFS),  
RESPONDENTS. \*

*Civil Procedure Code (Act V of 1908), O. XI, r. 14—Inspection of documents—Right of party—Discretion of Court—Caution to be exercised by Court in ordering inspection—No legal right as of course—Public policy—Necessary proof of plaintiff's title—Who can be allowed inspection on behalf of party—Dismissed employee of defendant's firm, siding with plaintiff—Suit for partnership accounts—Partnership denied—Trade accounts when can be inspected—Employee, if and when can be allowed to inspect for plaintiff.*

Where the plaintiff, alleging in the plaint that he was a partner in the defendant's firm and trade, sued for the taking of partnership accounts, and defendant denied the partnership in the written statement, specified therein several documents on which he intended to rely, and produced a large number of them into Court with a memorandum praying that the Court should not allow the plaintiff inspection of them without specific orders passed after hearing his objections, but the Court ordered that several of the documents might be inspected on behalf of the plaintiff by a dismissed employee of the defendant's firm on the plaintiff giving him a power-of-attorney and on his undertaking not to examine him as a witness in the case. On revision petitions being preferred by both sides against the orders,

*Held*, that, under Order XI, rule 14, Civil Procedure Code, the mere production of documents by one party does not give an immediate and indefeasible right of inspection to the other party;

that the plaintiff cannot, unless and until he has established his partnership, be allowed to inspect any documents which do not bear on the question of partnership, and that, as regards those which do bear on it, the Court must hear the defendant's objections before it passes its order; if and when the plaintiff has established his partnership, the

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\* Civil Revision Petitions Nos. 86, 87 and 116 of 1924.

Court must consider if the plaintiff is entitled to inspect the trade accounts of the firm ;

*Held further*, that the Court is not justified in law in permitting a dismissed employee of the defendant's firm, who was siding with the plaintiff in this dispute and ill-disposed towards the defendant, to be the person to inspect the trade accounts on behalf of the plaintiff, before the latter had established his partnership, although the person might have a power-of-attorney from the plaintiff ; but after the latter had established that he was a partner, the employee can be permitted to inspect on his behalf, as the employee would then have been as much the servant of the plaintiff as of the defendant ; *Enamul Huq v. Ekramul Huq*, (1898) I.L.R., 25 Cal., 294, followed.

Caution to be exercised by the Court in permitting inspection of documents, pointed out.

PETITIONS under section 115, Civil Procedure Code, and section 107 of the Government of India Act, to revise the orders of L. R. ANANTANARAYANA AYYAR, Second Additional Subordinate Judge of Madura, in Interlocutory Application No. 238 of 1923 in Original Suit No. 8 of 1923.

The plaintiff instituted the suit, on the footing that he was a partner in the firm and trade carried on by the defendants, for dissolution of partnership and for taking of accounts of the partnership and for other reliefs. The defendants filed their written statement denying the alleged partnership and mentioned therein several documents on which they intended to rely in the suit, and later on produced about 1,400 documents into Court with a memorandum in which the first defendant prayed that the Court might not allow inspection of them to the plaintiff except on specific orders passed after hearing his objections thereto. The issues in the suit were framed, but the trial had not commenced. The plaintiff filed an application for inspection of all

RAMACHARI  
v.  
KRISHNAMA-  
CHARI.

RAMACHARI  
v.  
KRISHNAMA-  
CHARI.

the documents, and later on applied that the documents might be inspected by one Mannar Aiyar, who was an employee of the suit firm for 20 years but had been dismissed by the first defendant and had joined the side of the plaintiff in this dispute. On that petition the lower Court first ordered inspection of 212 documents, but observed that Mannar Aiyar could be allowed to inspect only if he had a power-of-attorney from the plaintiff; after giving a power-of-attorney to the former, the latter again applied to allow the former to inspect; the lower Court ordered Mannar Aiyar to inspect the documents. The defendant thereupon filed a petition to set aside the order allowing inspection by Mannar Aiyar, and on that petition the Court passed an order to the effect that if the plaintiff would give an undertaking that the plaintiff would not examine Mannar Aiyar as a witness, he would be allowed to inspect, that if he would not give such an undertaking, this petition of the defendant must be considered to have been allowed, and inspection by Mannar Aiyar disallowed. Against these orders, both sides preferred Civil Revision Petitions, namely, Civil Revision Petitions Nos. 86 and 87 of 1924 being by the first defendant, and Civil Revision Petition No. 116 of 1924 being by the plaintiff.

*A. Krishnaswami Ayyar* and *T. M. Ramaswami Ayyar* for petitioner.

*K. Raja Ayyar* and *S. V. Ramaswami Ayyar* for respondents.

#### JUDGMENT.

First defendant in Original Suit No. 8 of 1923 on file of Second Additional Subordinate Judge's Court, Madura, has put in two Revision Petitions Nos. 86 and 87 of 1924 asking for revision of two interlocutory orders of

Subordinate Judge with reference to inspection of his documents by plaintiff. Interference by this Court with the proceedings of a lower Court during the pendency of a suit is to be deprecated unless strong reasons are made good, but in the present case I think that the revisional powers of this Court must be exercised, partly on the ground that the lower Court has not properly understood the provisions of Order XI, rule 14 of the Civil Procedure Code, and partly on the ground that the result of its orders may be wholly unnecessary and irremediable damage to first defendant's business interests.

2. There are two main contentions in the suit, (a) that plaintiff is really a partner in first defendant's firm and trade, (b) that plaintiff is therefore entitled to a taking of the partnership accounts. In his written statement first defendant referred, without giving particulars, to a number of documents on which he proposed to rely. Later on he filed various lists of them at various times and produced about 1,400 documents and put in a final affidavit of documents on 20th September 1923 in which he prayed the Court that it should not allow inspection of any document by plaintiff without specific orders and without notice to him. On 24th October 1923 plaintiff, without filing any affidavit, put in a memorandum asking for inspection of all documents filed in Court by defendants and followed that up on 1st November 1923 by an affidavit in which he requested that one Mannar Aiyar be permitted to inspect on his behalf. On that the lower Court on 2nd November 1923 passed the first order now under revision, permitting plaintiff to inspect 212 documents, but refusing to allow Mannar Aiyar to inspect as he was not a power-of-attorney agent for plaintiff.

3. I cannot assent to the proposition that, when a party has produced in Court under Order XI, rule 14,

RAMACHARI  
 v.  
 KRISHNAMACHARI.

documents in his possession but has urged that inspection should not be allowed before hearing his objections, the Court has a right to ignore that protest and the other party has a legal right to inspect all documents relating to all issues and at all stages of the trial of the suit, i.e., that the mere production by one party gives an immediate and indefeasible right of inspection to the other. I do not read Order XI, rule 14, as justifying any such conclusion. As the Court was proceeding according to the usual practice in the mufassal, to allow inspection in Court under Order XI, rule 14, and not under rule 15, I hold it was bound to consider first defendant's objections to inspection and especially bound to consider whether plaintiff was entitled to inspect all these documents *at that stage of the case, viz.,* before trial had begun. As pointed out above, the first point to be decided in the case is whether plaintiff is or was a partner in first defendant's trade. Until that is decided in plaintiff's favour, obviously plaintiff has no right whatever to be allowed to inspect the trade accounts, apart from those which bear on the question of partnership. The Court has no right to assume that plaintiff is a partner, and, if it must hold that he is not, unless and until he proves that he is, clearly it is unjustified in law in allowing a stranger, merely on the allegation that he is a partner, permission to inspect all the trade accounts of first defendant. The conduct of business would be impossible under such conditions and the Court has clearly lent itself to a course which is wholly opposed to public policy, and it is therefore necessary for this Court to interfere.

4. On this part of the case then, viz., on Civil Revision Petition No. 87 of 1924, the proper order is that plaintiff cannot be allowed, unless and until he has

established that he is a partner, to inspect any documents which do not bear on this question of partnership, and that, as regards documents which do bear on it, the lower Court must hear first defendant's objections before it passed its order. If and when plaintiff has established his partnership, then the lower Court will similarly consider if plaintiff is entitled to inspect the remaining documents. I reverse the order under revision in Civil Revision Petition No. 87 of 1924 and order accordingly.

RAMACHARI  
v.  
KRISHNAMACHARI.

5. In Civil Revision Petition No. 86 of 1924 the lower Court has still further wandered from what I regard as the first principles of public policy. Following on its order of 2nd November 1923, it passed a further order on 1st December 1923 permitting Mannar Aiyar to inspect all first defendant's documents (Mannar Aiyar having by then obtained a power-of-attorney from plaintiff), provided plaintiff undertook not to examine Mannar Aiyar as a witness. Plaintiff in his turn has filed Civil Revision Petition No. 116 of 1924 against the imposition of this condition. Now, without going into the details of affidavits on the relations of first defendant and Mannar Aiyar, the following points are clear:—(a) this Mannar Aiyar was employed in first defendant's firm for at least twenty years from 1898 to 1918, writing up and keeping the firm's accounts; (b) he left first defendant's service in 1918 and reverted to plaintiff's side in the dispute between plaintiff and first defendant and is now actively supporting plaintiff under circumstances which indicate that he personally is ill-disposed towards first defendant and (c) that plaintiff wants Mannar Aiyar to inspect the accounts and Mannar Aiyar himself wants to inspect them, because he already knows the firm's business so thoroughly that he will be able to detect if there has been any tampering with the accounts.

RAMACHARI  
v.  
KRISHNAMAMA-  
CHARI.

6. As supra, the Court is for the present to assume that plaintiff is an outsider to the firm, who has been able to gain over to his side a disgruntled former employee of first defendant and has given him a power-of-attorney for the express purpose of setting him to a roving inspection of first defendant's accounts and this is what the lower Court is permitting him to do. Such a course seems to me in the highest degree objectionable and contrary to public policy. That any outsider by mere allegations in a plaint should be able to obtain from a Court the power of inspection of all firm's books by a former employee of the firm who knows the firm's business for over twenty years and who is employed by the plaintiff for the purpose of that inspection, not because of his skill as accountant and auditor, but because of his exclusive and intimate acquaintance with all the firm's business, is a position that cannot be defended, and to permit it would be to put an end altogether to any privacy and confidential dealings in business.

7. The various rulings of English Courts which have been cited to me clearly establish the proposition that a Court can and must exercise discretion as to whom it is going to permit to conduct such an inspection and the case in *Enamul Huq v. Ekramul Huq*(1) is to the same effect. The absence of a power-of-attorney (as in that case) does not alter the personality of the proposed inspecting agent. I am strongly of opinion that, until and unless plaintiff establishes that he is a partner of the firm, Mannar Aiyar is, from his previous connexion with the firm, a wholly undesirable person to allow to inspect the accounts for plaintiff. If, however, plaintiff establishes that he is and was a partner, then as such partner he is entitled to the fullest scrutiny and

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(1) (1898) I.L.R., 25 Cal., 294.

knowledge of the firm's accounts and affairs, and the objection to an inspection of all the firm's books on his behalf by Mannar Aiyar, who would then in his connexion with the firm have been servant of plaintiff as much as of first defendant, would disappear.

RAMACHARI  
v.  
KRISHNAMACHARI.

8. I must therefore reverse the order under revision in Civil Revision Petition No. 86 of 1924 also and order that unless and until plaintiff establishes his plea of partnership, inspection on his behalf by Mannar Aiyar cannot be permitted and such inspection as the lower Court permits must be by some one else.

9. First defendant will get his costs on both these petitions. Civil Revision Petition No. 116 of 1924 is dismissed with costs, Rs. 50 being allowed for printing.

10. I must impress on the lower Court that such a privilege as inspection by a party of his adversary's documents is not a matter of routine, but is to be permitted or refused only after a judicial decision not only as to the right to inspection itself, but with reference also to the stage of the case at which such right is to be permitted, and that it is to be exercised so as to result in as little harm as possible to parties who are entitled to have the protection of the Court in carrying on their lawful pursuits.

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