

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 95/2012**

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Date of Decision: 31.05.2012

KRISHAN KUMAR

..... Appellant

Through Mr Rajat Aneja along with Mr S.
Sethu Mahendran, Advs.

versus

RAVINDER NARAIN & ORS

..... Respondent

Through Mr Sanjeev Bahl along with Mr
Kishan Rawat, Mr Mohit Mudgal, Ms Neha
Malik & Mr Rajan Narain, Advs.

CORAM:

HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J. (ORAL)

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CM No.10401/2012 (exemption)

Exemption as prayed for is allowed subject to just exceptions.

CAVEAT No.588/2012

The counsel for caveator/respondent is present. The caveat stands discharged.

RSA 95/2012

1. By way of this second appeal under section 100 CPC, challenge has been made to the impugned judgment/decreed dated 28.02.2012 by

which learned Senior Civil Judge cum RC(Central) has allowed the application of respondent no.1/plaintiff for additional evidence under Order XLI Rule 27 of CPC and has set aside the judgment/decreed dated 9th August, 2002 passed by the learned Civil Judge and has remanded back the matter to the learned trial court for fresh trial.

2. Respondent no.1 as Karta of HUF i.e., plaintiff before the learned Civil Judge had filed civil suit no.181/97 wherein prayer was made for a decree of injunction for restraining the defendant i.e., appellant herein, from making addition, alteration in the suit premises or misusing or creating interest of any third person to the premises bearing no. 1881, Haveli Jugal Kishore, Chandni Chowk, Delhi. In the aforesaid suit, respondent no.1/plaintiff claimed himself to be the owner of the suit property. It was stated that appellant/defendant was a tenant under respondent no.1/plaintiff with respect to entire ground floor except one separate room at a monthly rate of Rs.135/- and the property was let out for commercial purposes. It was stated that appellant/defendant had started misusing the suit property for the purposes other than for which it was let out to him and was also trying to raise illegal and unauthorized construction and wanted to part with possession of the same. It was alleged that if the appellant/defendant was not restrained, it would cause irreparable loss to respondent no.1/plaintiff.

3. In response to the said suit, appellant/defendant had filed written statement wherein his stand was that respondent no.1/plaintiff was not the owner/landlord of the suit property. It was alleged that appellant/defendant had taken the suit property on rent from one Raghubar Dayal who used to send the rent collector to collect the rent of

the tenanted premises from appellant/defendant. After his death, the said rent collector started issuing rent receipts under the name of respondent no.1/plaintiff to which appellant/defendant objected. The further stand of appellant/defendant was that in the municipal record, the suit property is still in the name of Sh.Raghubar Dayal. The appellant/defendant had denied that any illegal construction was done by him or that he was trying to part with the possession of the suit property. The appellant/defendant had alleged that the suit was without any cause of action and was liable to be dismissed.

4. After completion of pleadings, issues were framed in the said suit. The respondent no.1/plaintiff had led the evidence of one Sh. J.K. Bansal who appeared in the witness box as PW1. The appellant/defendant did not lead any evidence. Ultimately the suit of respondent no.1/plaintiff was dismissed vide judgment/decreed dated 09.08.2002.

5. The learned Civil Judge was of the view that respondent no.1/plaintiff had failed to prove that he was the landlord of the suit property. It was further held that respondent/plaintiff had also failed to prove that he is the legal heir of Raghubar Dayal and accordingly suit was dismissed.

6. Aggrieved with the same, respondent no.1/plaintiff had filed an appeal bearing no.RCA-273/2002 before SCJ cum-RC(Central) Delhi. In the said appeal, respondent no.1/plaintiff had moved an application under Order 41 Rule 27 CPC to substantiate his stand that respondent no.1/plaintiff is the legal heir of Raghubar Dayal and his father Rajender Narain had predeceased his grandfather Raghubar Dayal and suit property directly came to him. The original death certificates of Raghubar Dayal,

Rajender Dayal and other relevant documents were filed along with the said application to show the alleged relationship between him and Raghubar Dayal. The learned SCJ cum-RC(Central) relying on the judgments of the Supreme Court in K.Venkataramaiah Vs. A Seetharama Reddy & Ors AIR 1963 SC 1526 and North Eastern Railway Vs. Bhagwan Das (2008) 8 SCC 511 has held that the documents sought to be proved are Government documents and can be easily proved and there is no doubt about the authenticity of the same. It is further held that clause (b) of Order XLI Rule 27 CPC empowers the court to take the documents in additional evidence on record if the appellate court requires the same for substantial cause as such allowed the application and respondent no.1/plaintiff has been given an opportunity to prove these documents as per law. Appellant/defendant has also been given opportunity to prove their evidence in rebuttal. Accordingly learned SCJ has set aside the impugned judgment of learned Civil Judge and the matter has been remanded back to the learned Civil Judge to decide the matter afresh after taking the additional evidence.

Aggrieved with the aforesaid judgment, present appeal is filed. I have heard ld. counsel for appellant as well as ld. counsel for caveator/respondent who is present on an advance notice.

7. The documents which have been allowed by learned Senior Civil Judge by way of additional evidence are as under:-

- (i) The death certificate of Shri Raghubar Dayal;
- (ii) The death certificate of Shri Rajinder Narain;
- (iii) Attested copy of the passport of respondent no.1/plaintiff as well as his higher secondary examination certificate dated 01.02.1954;
- (iv) Copy of mutation letter along with a copy of a conveyance deed with respondent to property bearing municipal no.55,

Sunder Nagar New Delhi-110 003.

- (v) Copies of the receipts issued by the Municipal Corporation of Delhi towards payment of House Tax-deposited by respondent no.1/plaintiff in respect of property in question;
- (vi) Copies of the receipts issued by the Municipal Corporation of Delhi towards payment of house deposited by the respondent no.1/defendant in respect of property at 55, Sunder Nagar, New Delhi.

8. The aforesaid documents are government documents. The stand of respondent no.1/plaintiff is that he has been paying the property tax for the suit property for the past many decades. Late Raghubar Dayal had died in 1960 and for the past more than thirty years nobody has ever asserted title to these premises or paid property taxes due thereon. The aforesaid documents are relevant documents for deciding the controversy in issue. His further stand is that Sh.Raghubar Dayal, during his life time had adopted Sh.Rajender Narain, son of Pannu Lal, who was the father of respondent no.1/plaintiff. His father had predeceased Sh. Raghubar Dayal and therefore, after the death of Raghubar Dayal, the respondent no.1/plaintiff's HUF got the suit property by way of succession and it is assessed to income tax also.

9. The Supreme Court in the case of *Wadi v. Amilal & Ors.: JT 2002 (6) SC 16*, has dealt with the provisions of Order 41 Rule 27 CPC dealing with production of additional evidence at appellate stage. The relevant portion of the judgment is reproduced as under:-

“6.
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27. Production of additional evidence in Appellate

Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if –

(a) xxxx xxxx xxxx xxxx

(aa) xxxx xxxx xxxx xxxx

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The Appellate Court may allow such evidence or document to be produced, or witness to be examined.

7. Now it is clear that rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule(1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

(underlining added)

10. In the present case, the controversy between the parties is whether the respondent no.1/plaintiff is the legal heir of the original owner/landlord of suit property i.e. Sh. Raghubar Dayal. As noted above, the stand of the respondent no.1/plaintiff was that Raghubar Dayal was issueless and he had adopted his father, namely, Rajender Narain who predeceased Sh. Raghubar Dayal, who died in 1960, and after his death the suit property devolved upon him being the grandson of Raghubar Dayal. It is admitted position in the written statement of the appellant/defendant that the property was let out to appellant/defendant by Raghubar Dayal and during his life time, the rent collector of Raghubar Dayal used to collect the rent from him and after the death of Raghubar Dayal, the rent was collected for some time by the said rent collector on behalf of respondent no.1/plaintiff. In these circumstances, the Id. Senior Civil Judge has rightly allowed the application of the respondent no.1/plaintiff for leading additional evidence in the matter and the opportunity is given to the respondent no.1/plaintiff to prove the aforesaid documents as per provisions of Indian Evidence Act. The appellant/defendant is also given opportunity to prove their evidence in rebuttal. The Id. lower appellate court while exercising its power under Order XLI Rule 27(1)(b) of CPC has allowed additional evidence for pronouncing effective judgment in the matter.

11. In view of above discussion, no substantial question of law arises in the present appeal which requires consideration of this court. The appeal stands dismissed.

CM 10402/2012

Since the appeal has been disposed of, no further orders are required on this application. The same stands disposed of.

VEENA BIRBAL, J

MAY 31, 2012
ssb/srb