

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.40 of 2023

Smt. Hiranbala Malla & others

..... Petitioner(s);

Versus

Smt. Ramani Bala Malla & others

.....Respondent(s)

For Petitioner(s) : Mr. Ratan Datta, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

24/11/2023

Heard Mr. Ratan Datta, learned counsel for the petitioners. Despite valid service of notice, respondents have not entered appearance.

2. Petitioners, who are the appellants in T.A. No.04/2022 before learned Additional District Judge, South Tripura, Sabroom, have approached this Court on rejection of their prayer to adduce additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908 [CPC, *for short*]. The Title Suit No.13/2008 was instituted by the plaintiffs/respondents herein for declaration of right, title and interests of the plaintiffs over the land described in Schedule-A of the plaint and also for a direction upon the defendants to deliver the vacant possession of the lands described in Schedule-B of the plaint with cost. Schedule-A of the suit property is 0.82 acres of land being portion of Mouja Chetakchar (Satak Sori), under Sabroom Tehsil Kachari, comprising in Khatian No.371, stated in CS (Old) Plot No.328 and 327/1211, now stated in CS (New) Plot Nos.897 and 898. The suit was disposed of in favour of the plaintiffs on 30.07.2011. In second appeal, the matter was remanded to the Trial Court and subsequently on fresh trial, the suit was once again adjudicated and judgment was delivered on 08.04.2019. On the second occasion also, the suit

was decreed in favour of the plaintiffs, whereafter the T.A. No.04/2022 has been preferred by the aggrieved defendants, who are the petitioners herein.

3. The chronology of facts above and the pleadings on record indicate the checkered history of the litigation between the parties. The plaintiffs had set up a case that predecessor of the plaintiffs Late Himangshu Malla got allotment of 0.82 acres of land in Mouja Chetak Chari as described in Schedule-A and reclaimed the same and constructed his home and hearth thereupon. The defendants of the suit, who are full blooded brother of the predecessor of the plaintiffs, came to India and were permitted to live in the house complex of the plaintiff's predecessor considering their miserable condition. After the death of the predecessor of the plaintiff, the legal representative of the plaintiff no.8 requested her uncle i.e. the defendant Sri Narayan Malla to vacate the land and deliver the vacant possession of the suit land; but he flatly denied. Hence, the suit for declaration of right, title and interests of the plaintiffs was filed. In the written statement, the defendants took a plea that the predecessor of the plaintiffs, Himangshu Malla was in possession of the suit land except for a few days when he had been residing with the defendant in the same family in 1975. During emergency, he managed to obtain an order of allotment of the suit land from the Government behind the back of the defendant and left Tripura for good immediately thereafter. The defendant came to know about the allotment in the first week of August, 2008 and filed application before the Sub-Divisional Magistrate, Sabroom, South Tripura for cancellation of said allotment. The defendants also made further averments denying the claim of the plaintiffs.

4. In this background, the present issue revolves around the prayer of the defendants/appellants, who are legal heirs of the original defendant, for adducing additional evidence in the nature of an inquiry report submitted by the Revenue Inspector, Sabroom, South Tripura bearing letter No.218 dated 21.11.2012 to the Sub-Divisional Magistrate, Sabroom, South Tripura. The appellants in their application before the learned Court under Order XLI Rule 27 of the CPC contended that the fate of the said cancellation proceedings was never communicated to the applicants/appellants which was initiated by son of the original defendant, Sri Pradip Malla. After frantic search, they have found that the cancellation proceeding was disposed of on 05.03.2014 on the ground of pendency of the matter in the High Court. Appellants further contended that they had never gone to the High Court for cancellation proceedings, as it was entirely in the domain of the Allotment Authority, and not within the jurisdiction of the Civil Court.

5. Referring to the contents of the inquiry report dated 21.11.2012 specifically paragraph 4 onwards, Mr. Datta, learned counsel for the petitioners, submits that the allottee i.e. the plaintiff's predecessor was found to have not used the allotted land within two years from the date of allotment as per the condition imposed under the TLR & LR (Allotment of Land) Rules, 1980 and as such, the aforesaid land particulars could be recorded as khas land to the Government of Tripura. The report also mentions that the applicant's opposite party i.e. Smt. Swapna Malla/plaintiff No.8, daughter of Late Himangshu Kumar Malla, the allottee, had also filed a case before the Sub-Divisional Judicial Magistrate, Sabroom for eviction from the land which was pending. Learned counsel for the petitioners submits that the instant Title Suit instituted

by Swapna Malla is the case which has been referred to by the Revenue Inspector in his report dated 21.11.2012. It is submitted that the instant documents could not be obtained despite due diligence during the proceedings of the suit though they have a significant bearing on the outcome of the dispute between the parties which is pending before the learned Appellate Court. In such circumstances, the prayer for adducing additional evidence under Order XLI Rule 27 of the CPC was made. It is submitted that the learned Appellate Court has, on the first date itself, rejected the prayer without even calling for response from the plaintiffs/respondents and without considering whether the document in question was material or not for pronouncing judgment. An application under Order XLI Rule 27 of the CPC is to be considered at the time of hearing of appeal on merits, so as to find out whether the documents and/or the evidence sought to be adduced have any relevance or bearing on the issue involved. This position stands settled in view of the decision rendered by the Apex Court in a number of cases such as *Union of India v. Ibrahim Uddin & another* reported in (2012) 8 SCC 148 and has been profitably referred to in the case of *A. Andisamy Chettiar v. A. Subburaj Chettiar* reported in AIR 2016 SC 79 at Paragraph 16.

6. It is submitted that perusal of the impugned order would show that the parties were asked to make their points of arguments on the next date; but before the hearing of the appeal on merits, the learned Appellate Court has rejected the application for adducing additional evidence without considering the grounds laid down under Order XLI Rule 27 as to whether such additional evidence was worthy to be allowed to be adduced at the appellate stage by the defendants/appellants/petitioners herein. In view of the interim order, the

appeal is pending. The respondents do not appear to be interested in contesting the plea raised by the petitioners herein as despite valid service of notice, they have not chosen to appear. In such circumstances, the matter may be remitted to the appellate court for fresh consideration on the prayer for adducing additional evidence in accordance with law after due opportunity to the other side.

7. I have considered the submission of learned counsel for the petitioners and taken note of the relevant materials placed from the record. I have also gone through the impugned order and the decision cited on behalf of the petitioners.

8. The factual background leading to the present controversy needs no reiteration at this stage, lest it would affect the merits of the prayer made by the petitioners for adducing additional evidence before the learned appellate court. However, it is apparent from perusal of the impugned order dated 02.08.2023 that the learned appellate court has, in a cryptic manner before the stage of hearing of the appeal on merits, rejected the prayer for adducing additional evidence without dealing with the specific grounds as are required to be made out and dealt with in terms of Order XLI Rule 27 of the CPC. Order XLI Rule 27 is extracted hereunder :

“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) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(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.”

9. As such, since the appeal is at the stage of hearing in the fitness of things, the prayer of the appellants/petitioners herein requires to be considered afresh by the learned appellate court in accordance with law. In this regard, it is apposite to refer to the opinion expressed by the Apex Court as relied upon and referred to in the case of *A. Andisamy Chettiar* (supra) at Paragraph 16 quoted hereunder:

“16. In *Union of India v. Ibrahim Uddin and another*, this Court has held as under:-

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced”

10. As such, the impugned order is set aside. The learned appellate court shall take a fresh decision on the prayer of the appellants/petitioners herein for adducing of additional evidence in terms of Order XLI Rule 27 of the CPC without granting unnecessary adjournments to the parties. Let it be made clear that no observation made hereinabove would be treated as comments on the merits of the case of the parties or the prayer made by the Appellants for adducing additional evidence.

11. The instant revision petition is disposed of. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ