GAHC010036192023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/58/2023

MONU DAS
R/O PUJADUBI, BLOCK NO. 1, JORHAT TOWN, P.O. AND P.S. AND DIST-JORHAT, PIN-785001

VERSUS

UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAYS, MALIGAON, GUWAHATI-11, DIST-KAMRUP (M), ASSAM

2:THE GENERAL MANAGER
N.F. RAILWAYS
MALIGAON
GUWAHATI-11
DIST-KAMRUP (M)
ASSAM

3:THE DIVISIONAL MANAGER
N.F. RAILWAYS
TINSUKHIA
DIST-TINSUKHIA
ASSAM
PIN-786125

4:THE ESTATE OFFICER
N.F. RAILWAYS
TINSUKHIA
DIST-TINSUKHIA
ASSAM
PIN-786125

5:THE SENIOR SECTION OFFICER

N.F. RAILWAY
MORIANI
DIST-JORHAT
PIN-785001

6:THE ASSISTANT DIVISIONAL ENGINEER
N.F. RAILWAY
MORIANI
DIST-JORHAT
PIN-78563

Advocate for the Petitioner : MS F AHMED

Advocate for the Respondent : DY.S.G.I.

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

27. 02. 2023

Heard Mr. SK Ghosh, learned counsel for the petitioner. Also heard Ms. B Sarma, learned CGS.

2. The present application is filed against an order dated 16.12.2022 passed by the learned District Judge, Jorhat in Misc Appeal No. 35/2018. The said appeal was registered under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as Act, 1971) against order of eviction passed by Estate Officer, NF Railway, Tinsukia in Eviction case No. EO/TSK/Land/1639/2018. Therefore, the District Judge was acting and exercising his jurisdiction as an appellate authority under the Act, 1971. By the impugned order the learned Appellate court refused to allow an application under Order 41 Rule 27.

3. The background fact is that the present petitioner claims to be a tenant under one Monika Ghosh. It is the case of the petitioner that the land

measuring 3 Bighas 3 Kathas 11 Lechas covered by Dag No. 4092 and part of 4081 of Block I, Jorhat Town, Jorhat along with a Chang Bungalow bearing No. L/2 and another 8 houses standing therein was subject matter of TS No. 49/1993. The said suit was filed by the land lord of the present petitioner, namely, Monika Ghosh for declaration of title and confirmation of possession. The said suit was dismissed by the competent court on 25.01.2006. Being aggrieved, the land lord of the present petitioner preferred RFA No.09/2007 and said appeal was also dismissed by this court under its judgment and order dated 31.08.2017. It is the further pleaded case of the petitioner that subsequent to this, the Railway Authorities issued notice to the land lord of the petitioner and cautioned her of eviction from the land, which was subject matter of TS No. 49/1993. The legal heirs of Monika Ghosh being aggrieved approached this court by filing a writ petition being WP(C) 6911/2017 and the said writ petition was disposed of under order dated 15.11.2017 with an observation that the Railway Authority shall have option to evict the occupants from the railway land by issuing due notice under the provision of the Act, 1971. It is the further case of the petitioner that subsequent to this, four sets of notices were issued to the landlord of the present petitioner in respect of the land in question. Being aggrieved, the legal heir of the landlord namely Bhopal Ghosh preferred an appeal under Section 9 of the Act, 1971, which was registered as Misc (A) No. 01/2018 and the learned appellate court while admitting the appeal stayed the operation of the notice of eviction. Subsequently, the notice was withdrawn and on the basis of such the Misc Appeal was closed.

4. According to the petitioner, the respondent No. 4 i.e. Railway Authority

again issued notice of eviction under the Act of 1971 in respect of the same schedule land and the legal heir of Monika Ghosh duly contested the said proceeding and the matter is still pending before the Estate Officer.

5. Notices were also issued to the present petitioner for his eviction under the Act, 1971, which the present petitioner contested. However, their pleas were rejected and accordingly eviction was directed. Being aggrieved they preferred an appeal under Section 9 of the Act, 1971, which was registered as Misc Appeal No. 35/2018. While the matter was pending before the appellate court the present petitioner preferred an application under Order 41 Rule 27 of the CPC seeking to lead additional evidence at the appellate stage by bringing certain documents before the court which, were obtained through the Right to Information Act, 2005 and accordingly they wanted to prove such document by its author i.e. the Senior Divisional Engineer, Co-Ord Northern Frontier Railways, Tinsukia.

6. The said RTI reply is about the pendency of the proceeding under the 1971 Act against the legal heir of Monika Ghosh and therefore according to the petitioner/ appellant it is very essential to prove such documents. The learned court below after hearing the matter passed the impugned order rejecting such application on the following grounds.

   I. The appellant is aware of the details of the land and property and aware that same is subject matter of another eviction case and therefore, such fact is not something which has come to the notice of the appellant for the first time.

   II. The dag numbers, patta numbers, Gaon, Block of the land in question are already available, therefore, no additional evidence is

required.

III. Finally, the learned appellate court came to a conclusion that it is not necessary to have additional evidence inasmuch as Rule is against production of additional evidence at the appellate stage.

IV. The Hon'ble Apex Court in the judgment relied on by the appellant has clarified that additional evidence may be adduced to remove the clouds of the doubts, however, when there is no doubt at all and when the materials are on record, there is no necessity to adduce additional evidence.

7. Mr. Ghosh, learned counsel for the petitioner argues that the petition ought not to have been rejected by the impugned order inasmuch as an application under Order 41 Rule 27 is to be taken up at the stage of final hearing. Therefore, the learned Appellate Court ought to have kept the matter pending and ought to have taken up the application at the time of final hearing. It is also the case of Mr. Ghosh that the document has been obtained during the pendency of the appeal and therefore, it has become necessary to prove such document through its author. It is also the case of the petitioner that earlier also the appellant prayed for calling the record of the proceeding related to the eviction of the legal heir of Monika Ghosh, however, same was also rejected. Therefore, it was very necessary to lead additional evidence for interest of justice.

8. The Hon'ble Apex Court in the case of ***Andisami Chettiar Vs Subburaj Chettiar*** reported in ***(2015) 17 SCC 713*** held that admissibility of evidence does not depend upon the relevancy to the issue on hand, or on 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. It was also held that the true test, therefore, is whether Appellate Court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced.

9. In the case in hand from the pleadings made in the application under Order 41 Rule 27, no case has been made out that the fact of pendency of similar proceeding under the Act, 1971 against the legal heirs of the landlord shall have direct bearing for the determination of the case of the petitioner inasmuch as from the pleadings in the revision petition itself it is clear that there is no dispute that the petitioner is a tenant under a landlord who sought declaration for right, title and interest over the said premises, which was dismissed and this court already permitted the Railway Authorities to proceed under the Act, 1971 and as held by the learned trial court below all the aforesaid facts are available on record. Therefore, the RTI report, which discloses that there are pending proceedings against the legal heirs of Monika Ghosh is having no relevance for determination of the appeal preferred by the appellant not to say for pronouncement of any judgment inasmuch as the appellant is to establish his case on its own merit not on the basis of any determination made against their landlord. Therefore, this court is of the view that the learned trial court rightly concluded that there is no cloud, which is required to be removed through additional evidence.

10. Further, this court do not find any infirmity with the order passed by the learned Appellate court below inasmuch as the proceeding going against

the petitioner is nothing but an appeal under the provision of the Act, 1971 and wherein the spirit of Code of Civil Procedure is applied and it is not applicable in the strict sense of the Code of Civil Procedure.

11. Above all, this court is also of the view that from the pleadings in the present petition there is no dispute to the fact that the present petitioner was a tenant under Monika Ghosh and the tenanted premises is situated over a railway land and the landlord i.e. Monika Ghosh's suit for declaration of right, title and interest over the said property has already been rejected.

12. In view of above, this court is of the opinion that no meaningful purpose shall be served if the additional evidence is allowed except delaying the proceeding.

13. Accordingly, this revision petition stands dismissed. No cost.

JUDGE

Comparing Assistant