GAHC010043352023

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

Case No. : CRP(IO)/62/2023

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

VERSUS

THE 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
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.03.2023

Heard Ms. F. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned CGS.

2. This revision has been preferred by the petitioner under Article 227 of the Constitution of India against the order dated 16.12.2022 passed by the learned District Judge, Jorhat in connection with petition No. 943/2022 arising out of Misc. Appeal No. 37/2018, whereby an application filed under Order XLI Rule 27 read with Section 151 CPC filed by the petitioner was rejected.

3. The brief facts of the case is that a plot of land measuring 3 Bighas 3 Kathas 11 Lechas covered by Dag No. 4092 and part of 4081 in Block No.1, Jorhat Town, Jorhat along with a 'Chang Bungalow' bearing No. L/2 and another 8 houses standing thereon is the subject matter of T.S. No.49/93 filed by one Monika Ghosh and other heirs of Bhopal Ghosh filed before the court of Civil Judge, Jorhat praying for declaration of title and confirmation of possession over the said land.

4. After filing of the said suit by Monika Ghosh and other, the respondent contested the suit by filing written statement without any counter claim of eviction of the plaintiffs from the suit land and the suit was finally disposed off on dismissal on 25.01.2006. After dismissal of the said suit, Monika Ghosh and others preferred an appeal before this Court vide RFA No. 09/2007 which was also dismissed on 31.08.2017. After dismissal of RFA No.09/2007, the respondent No.4 issued a letter dated 23.10.2017 in the name of Monika Ghosh to comply with the order of this Court failing which it was also cautioned to evict the said Monika Ghosh and Others from the land in question.

5. On receipt of the notice, the heirs of Monika Ghosh moved before this Court vide WP(C) Case No. 6911/2017 and this Court vide its order dated 15.11.2017 allowed the writ petition with an observation that it was not foreclose the option of the railway authority to evict the occupants from the railway land by issuing due notice under the Public Premises Eviction of Unauthorized Occupants Act, 1971(herein after Eviction Act, 1971).

6. After disposal of WP(C) No. 6911/2017, the respondent No. 4 sent a notice of eviction under Eviction Act, 1971 to the heirs of Bhopal Ghosh in respect of the Schedule A Chang bungalow being No. L/2 and other 8 houses situated on a land measuring 3 Bighas 3 Kathas 11 Lechas as aforesaid. On receipt of such notice dated 20.12.2017, the heirs of Bhopal Ghosh preferred an appeal before this Court. It is also stated in the petition that the petitioner is occupying the land specified by Dag No. 4092 and part of 4081 and the alleged notice is vague so much so that it fails to disclose any cadastral Dag number to specify the land under the occupation of the petitioner. Subsequently, the petitioner was served with a notice by the respondent No. 4 vide Eviction Case No. EO/TSK/Land/1651/2018 under

Section 5 of the Eviction Act. Thereafter, the petitioner on receipt of the notice filed an appeal before the court of learned District Judge, Jorhat. During pendency of the appeal, petition No. 943/2022 was filed before the learned District Judge, Jorhat to adduce additional evidence which was rejected. Hence, this petition.

7. It is submitted by the learned counsel for the petitioner that the learned District Judge, Jorhat has acted illegally by rejecting the application for adducing additional evidence at the appellate stage by calling the official witnesses to prove certain documents as the same is relevant for the purpose of proper and just decision of the case and prayed to set aside the order dated 16.12.2022.

8. On the other hand, the learned counsel for the respondents has submitted that the petitioner being the tenant of one Monika Ghosh who occupied the railway property and all the cases filed by the landlord of the petitioner was dismissed by the Civil Court. Under such backdrop, there is no question to review the order of the District Judge, Jorhat by directing to adduce additional evidence in the appellate stage.

9. I have considered the submissions made by the learned counsel for the parties and I have also perused the order of learned District Judge, Jorhat.

10. It appears that the petition vide No. 943/2022 was filed by the petitioner under Order XLI Rule 27 read with Section 151 CPC praying for allowing the petitioner to adduce additional evidence by examining Senior Divisional Manager/Coordinator, N.F. Railway, Tinsukia. It also appears that the petitioner has through his learned counsel filed an RTI application before SPIO, Sr. Commercial Divisional Manger-cum-PIO, N.F. Railway, Tinsukia seeking an information as to whether the land involved in the appeal is the

part and parcel of the land involved in previously initiated proceeding against the land of the petitioner i.e. Monika Ghosh and pending proceeding of Eviction Case No. EO/TSK/Land/1651/2018 against the other heirs of the petitioner and it was informed that the land in the appeal is the part and parcel of the land involved in the previously initiated proceeding against Monica Ghosh and her heirs.

11. Now it is appropriate to reproduce Order 41 Rule 27 C.P.C., 1908 and to consider the law on the subject Order 41 Rule 27 which reads as under:-

> "(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 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
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> (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.
>
> (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

12. In the case of *Union of India vs Ibrahim Uddin and Anr.* reported in *(2012) 8 SCC 148*, the Hon'ble Supreme Court held that *the appellate court*

has the power to allow the document to be produced and a witness to be examined but the requirement of law is that if the court finds it necessary to obtain such evidence to enable it to pronounce a judgment. The provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal. It has also been held that the words 'for other substantial cause', must be read with the word 'required' in the beginning of the sentence, so, it is only where for substantial cause the appellate court requires additional evidence then this rule will apply.

13. In the said judgment Ibraham Uddin (supra), the following are reproduced as under-

> *"36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.*
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> *38. To sum up on the issue, it may be held that an application for*

taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court."

14. In the case in hand, admittedly, the land and property in which the petitioner resides is the property of the railway and eviction case is pending against the landlord of the petitioner and her heirs. Though, some cases were filed before the learned Civil Judge claiming title and possession over the said property by landlord of the petitioner and her heirs but which were dismissed. Under such backdrop, the question of adducing further evidence to prove the title and possession over the railway property or identification of the land does not arise at this stage.

15. In the light of the decision of the aforesaid proposition of law, I do not find any infirmity in the order dated 16.12.2022 passed by the learned District Judge, Jorhat.

16. In view of the above observation, the petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant