

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 4727 of 2023

Petitioner :- Rajendra Kumar

Respondent :- Samrendra Kumar

Counsel for Petitioner :- Ravindra Kumar Singh Raj, Amita Shukla

Hon'ble Rajnish Kumar, J.

1. Heard Sri R.K. Singh Raj learned counsel for the petitioner.
2. This petition has been has been filed challenging the order dated 29.05.2023 passed in Civil Appeal no.51 of 2019 (Rajendra Kumar vs Samrendra Kumar) by means of which application under Order 41 Rule 27 read with Section 151 CPC filed by the petitioner for production of additional evidence has been rejected.
3. Learned counsel for the petitioner submits that the respondent had filed a suit for permanent injunction claiming the land in dispute on the basis of Patta granted by the Gaon Sabha. The petitioner had filed a written statement disclosing therein that no such Patta has been issued in favour of the respondent and the respondent has produced forged Patta but without considering the same the suit was decreed by means of the judgment and order dated 31.05.2018. The petitioner has preferred civil appeal against the said order and decree. During pendency of the appeal, the petitioner moved a questionnaire before the Tehsildar Dalmau Raibareilly in regard to the Patta of the petitioner, on which he got an information that no such residential Patta has been issued in favour of the respondent. Therefore, the petitioner moved an application under Order 41 Rule 27 for taking the same on record and considering the same in the appeal, but the application has been rejected without considering the grounds raised and the substantial evidence has been declined to be taken on record, therefore, the petitioner is constrained to approach this Court. Learned counsel for the petitioner relies on ***Shalimar Chemical Works Ltd vs Surendra Oil & Dal Mills (Refineries) and others*** reported in **2010(28) LCD 1345**.
4. Having considered the submissions of learned counsel for the petitioner, I have perused the record.
5. The petitioner has filed Misc. Civil Appeal no.51 of 2019 (Rajendra Kumar vs Samrendra Kumar) challenging the judgment and order dated 31.05.2018 passed by the Civil Judge (JD) Dalmau, Raibareilly in Original Suit no.819 of 2004

(Samrendra Kumar vs Rajendra Kumar). A typed copy of the judgment and decree has been placed on record as Annexure-4 to the petition, which indicates that the petitioner had taken a plea that the Patta produced by the respondents is forged one and he has not made any construction in the last 3 years, therefore, the same is liable to be cancelled. Thus, it cannot be said that the petitioner was not having the knowledge of the Patta in favour of the respondent. The trial court after considering pleadings and the evidence adduced before it found that the case of the respondent made on the basis of Patta in regard to the land in dispute is proved, decreed the suit. While decreeing the suit, the trial court also found that the petitioner has failed to substantiate/prove his case as set up before the trial court.

6. The appellate court, after considering the application of the petitioner and the pleadings made before the trial court, has recorded a finding that the petitioner had knowledge of the Patta since the beginning, therefore, the aforesaid pleadings were taken by the petitioner. Even otherwise, the questionnaire produced by the petitioner could have been obtained earlier also and produced before the trial court and adduced the evidence from the concerned office to prove the contention raised before the appellate Court on the basis of questionnaire. Learned counsel for the petitioner, on a query being put, failed to indicate as to how the questionnaire obtained from an office can be a substantial piece of evidence, that too at the appellate stage. Even otherwise, the questionnaire obtained by the petitioner contained in Annexure no.6 is specifically for residential Patta, whereas the objection raised by the petitioner was in regard to Patta only, which has been considered by the trial court, therefore, also it cannot be considered, at this stage.

7. The additional evidence, at the appellate stage, can be produced, only if, 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. In the present case, it cannot be said that the petitioner could not have obtained questionnaire and it could not be obtained despite due diligence of the petitioner and it is also not the case of the petitioner.

8. The additional evidence can be produced or any witness can be examined if the appellate court requires to enable it to pronounce judgment, or for any other substantial cause, but the appellate court has not exercised this power and if the petitioner had not produced the evidence before the trial court which

could have been produced by him, he cannot claim that the appellate court should take evidence for substantial cause and exercise this discretion unless required by it.

9. So far as the judgment relied by learned counsel for the petitioner, in the case of ***Shalimar Chemical Works Ltd vs Surendra Oil & Dal Mills (Refineries) and others (supra)***, is concerned, in that case, the evidence was accepted for substantial reason on the ground that the judgment of the trial court was contrary to the procedure prescribed by Order 13 Rule 4, in appeal against trial Court judgment, therefore, the present case is distinguishable on the facts of the case and the petitioner is not entitled for any benefit of the judgment relied by him. Relevant paragraph-8 of the same is extrated hereinbelow:-

"8. Learned counsel contended that since the procedure followed by the trial court was contrary to the procedure prescribed by Order 13, Rule 4, in appeal against the trial court judgment, the learned single judge of the High Court was fully justified in accepting the originals of the documents concerned in evidence and the division bench was not right in holding that the originals of the concerned documents were wrongly taken in evidence. Mr. Rao submitted that while enumerating the circumstances in which production of additional evidence may be allowed, the division bench overlooked the words "or for any other substantial reason" at the end of clause (b) of rule 27 (1). He submitted that those words greatly enlarged the scope of the provision and were especially relevant for a case like the one in hand where the plaintiff had suffered great prejudice due to the incorrect procedure followed by the trial court. In support of his submission he relied upon the decision of this Court in [K. Venkataramiah vs. A. Seetharama Reddy & Ors.](#), 1964 (2) SCR 35 (at page 46).

"... Apart from this, it is well to remember that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment," it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under Rule 27(1)(b) of the Code."

10. In view of the above and considering the over all facts and circumstances of the case, this Court is of the view that the impugned order dated 29.05.2023 has rightly been passed by the appellate court in accordance with law. There is no illegality or error in the order impugned, which may call for any interference by this Court. The petition is misconceived and lacks merit.

11. The petition is dismissed. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 18.10.2023/Harshita