

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.20 of 2024

Sri Panu Kanta Nath

..... Petitioner (s).

Versus

The State of Tripura and others

..... Respondent(s).

For Petitioner (s) : Mr. S. Deb, Sr. Advocate,
Mr. S. Datta, Advocate,
Ms. M. Majumder, Advcoate.

For Respondent(s) : Mr. P. Gautam, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

15/03/2024

Heard Mr. S. Deb, learned senior counsel assisted by Mr. S. Datta learned counsel for the petitioner. Also heard Mr. P. Gautam, learned counsel for the respondents-State.

[2] Petitioner sought annulment of two gift deeds dated 14th December, 1981 executed in favour of respondent No.2 on a plea that he was a minor at that stage. The Title Suit No.1/2018, however, was dismissed by the Court of learned Civil Judge (Sr. Division), North Tripura, Dharmanagar. Petitioner has preferred an appeal bearing No.11/2019 pending before the learned District Judge, Dharmanagar, North Tripura. He sought to adduce additional evidence in the nature of school transfer certificate, PAN Card and AADHAR Card to establish his minority.

[3] Mr. S. Deb, learned senior counsel for the petitioner submits that reference of his admission in school has been made in the plaint but admittedly

he did not adduce it during trial. The same was sought to be produced but after conclusion of arguments and before pronouncement of judgment by the learned Trial Court. Therefore, the learned Trial Court did not take it into account. At the appellate stage even before the final hearing is commenced the payer for adducing additional evidence in terms of Order XLI Rule 27 has been declined. The learned Court ought to have kept it alive till final hearing of the case in terms of Order XLI Rule 27(b) to enable it to pronounce judgment, or for any other substantial cause, if the Appellate Court required such document to be produced or such witnesses to be examined. The appellant does not deny that the additional evidence was not within his knowledge or could not have been procured despite due diligence and therefore does not rely upon the provisions of Order XXVII Rule 1(aa) for invoking this power.

[4] Learned senior counsel for the petitioner therefore submits that if such application is allowed to be entertained at the time of final hearing of the appeal, the learned Appellate Court may be enabled to take a considered view as to whether these documents would enable it for complete adjudication of the issues and to pronounce judgment. Therefore the impugned order may be set aside.

[5] Mr. P. Gautam, learned counsel for the respondent has opposed the prayer. It is submitted that the learned Court has rightly held that this documents were not such which were not within the knowledge of the plaintiff/appellant or could not have been produced despite exercising due diligence during trial. As such, the appellant should not be allowed to fill up the lacunae in this case at the final stage of the appeal. The impugned order, therefore, does not require any interference.

[6] I have considered the submissions of the learned counsel for the parties and taken note of the relevant material facts. The only reason which persuades this Court to interfere is that the prayer for adducing additional evidence has been rejected by the learned Appellate Court at a stage before the hearing of the case has commenced. Under Order XLI Rule 27 (b) the learned Appellate Court has been conferred the power to require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, if the Appellate Court in its discretion thinks it so necessary. [See *Sanjay Kumar Singh versus State of Jharkhand* reported in (2022) 7 SCC 247 (paragraph-8 & 11).

[7] As such, without expressing anything on the merits of the prayer for additional evidence, this Court is of the view that the appellate Court would consider such a prayer at the time of final hearing of the case. To that extent the impugned order is interfered with. Accordingly, the instant petition is disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ