

HIGH COURT OF TRIPURA
AGARTALA
CRP No.107 of 2024

Jahir Miah, S/o Idrish Miah, resident of Kulubari, P.O. Sonamura, District-Sepahijala, Tripura. Presently residing at Sonamura Nagar Panchayat, Ward No.10, P.S. – Sonamura, District- Sepahijala Tripura.

..... Applicant(s).

Versus

1. Md. Yeasin Miah.
2. Michilur Rahaman
3. Abdul Kader

All are son of Idrish Miah, resident of Kulubari, P.O. Sonamura, District Sepahijala Tripura. Presently residing at Sonamura Nagar Panchayat, Ward No.10, P.S. Sonamura, District-Sepahijala Tripura.

4. Smti Sarifa Begam, W/o Safik Miah, D/o Idrish Miah, R/o. Rangamatia, P.S- Sonamura, Dist- Sepahijala.
5. Smti Tahider Nacha, W/o Hanif Khan, D/o Idrish Miah, R/o. Durgapur, P.S- Sonamura, Dist- Sepahijala.
6. Smti. Arifa Begam, W/o. Habil Miah, D/o Idrish Miah, R/o. Baler Dhepa, P.S- Sonamura, Dist- Sepahijala.
7. Smti Sadhika Begam, W/o Delowar Hossair, D/o Idrish Miah, R/o. Rangamata, Dist- Sepahijala.
8. Idrish Miah, S/o Lt. Jamsher Ali, resident of Kulubari, P.S. Sonamura, Dist- Sepahijala Tripura.

..... Respondent(s).

For Applicant(s) : Mr. D.C. Roy, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

ORDER

22/11/2024

Heard Mr. D.C. Roy, learned counsel for the petitioner.

2. The petitioner is the defendant No.1 in Title Suit No. 01/2018 and the appellant in Title Appeal No.2/2022. The suit instituted for cancellation of registered sale deed No.I-01440 dated 29.09.2014 executed by Idrish Miah was decreed in favour of the plaintiff-respondent on 24.03.2022 by learned Civil Judge (Sr. Division), Sepahijala, Sonamura against which the defendant No.1/appellant/petitioner herein preferred the Title Appeal No.2/2022 before

the District Judge, Sonamura, Sepahijala District. Under Order XLI Rule 27 of the CPC, defendant No.1/appellant/petitioner herein filed an application for production of additional evidence on 19.04.2023 (Annexure-D). The relevant averments and prayer of the instant application are extracted hereunder:

“IN THE MATTER OF: An application Under Order 41 Rule 27 of the Civil Procedure Code for production of additional evidence in appellate court.

The defendant appellant petitioner begs to state as follows:-

1. That the defendant appellant petitioner intends to produce additional evidence in the instant appeal for sake of proper justice to the parties of this appeal.

2 That the defendant appellant petitioner submits that his father Mr. Idrish Miah the proforma defendant respondent has other landed properties beside the registered sale deed Vide No.1-1440 dated 20.09.2014 by which the suit land was sold to the appellant.

3. That the proforma defendant Idrish Miah has got landed property in Khatian No. 230/1 at Mouja Kulubari, Tehashil-Matinagar, Sub-Division- Sonamura wherein said Idrish Miah has got 1/3 share in the total land measuring 3.24 acres that is Idrish Miah has got 1.08 acres of land.

The copy of Khatian No. 230/1 is enclosed and marked as Annexure-1.

4. That Said Idrish Miah along with others has got landed property in Khatian No. 231 Mouja-Kulubari, Tahshil Matinagar, Sub-Division-Sonamura, wherein Idrish Miah has got share of 26580 out of total land 0.72 satak.

The copy of Khatian No. 231 is enclosed herewith and Marked as Annexure-2

5. That Said Idrish Miah proforma defendant Respondent has got 50% i.e. fifty percent share in Khatian No.690 Mouja Kulubari, T.K. Matinagar, Sub- Division-Sonamura where said Idrish Miah out of 1.80 satak is the owner and possessor of land measuring 0.90 satak that is 2 Kanis 5 gandas of land.

The copy of Khatian No.690 is enclosed here with and Marked as Annexure-3.

6. That the aforesaid Khatians are the ample proof of the landed property belongs to father of the appellant.

7. That the appellant purchased only a part of land from Idrish Miah and paid the full value of Rs,3,00,000/-(Rupees three Lakh) only and there is not adverse opinion against the purchase.

8. That if the Khatians as states above are not allowed as additional evidence in that case the appellant will be seriously prejudiced and deprived of getting proper justice.

9. That the aforesaid Khatian could not be produced during trial and after the judgment was pronounced than the appellant collected those Khatians and now producing before the Hon'ble Court. The Khatians as stated are finally published Khatian and has got evidentiary value in the eye of law.

10. That the petition for adducing additional evidence is filled bonafide and to secure the ends of justice.

11. That the rest would be submitted at the time of hearing.

Under the circumstances stated above it is most humbly and respectfully prayed that your honour would be graciously pleased to accept the Khatians as additional evidence.”

3. The learned District Judge, Sepahijala District has rejected the prayer vide impugned order dated 12.09.2024 holding that the defendant No.1/appellant/petitioner herein has not stated in his petition that the lower Court had improperly refused to admit evidence which ought to have been admitted. He also had failed to show that the documents/additional evidence which defendant No.1/appellant/petitioner herein wanted to adduce was not within his knowledge or he could not after exercise of due diligence produced it at the time when the lower Court passed the decree. The case of the defendant No.1/appellant/petitioner herein is also not that such evidence is required by the appellate Court to pronounce judgment or for any other substantial cause. Therefore, the learned appellate Court after a detailed discussion of the averments in relation to the said prayer and the plea of the appellant to produce copy of a Khatian, referred to the provisions of Order XLI Rule 27 of the CPC and refused to admit such additional evidence. The defendant No.1/appellant/petitioner herein being aggrieved has challenged the same before this Court.

4. I have considered the submission of the learned counsel for the petitioner and taken note of averments made in the application under Order XLI Rule 27 of the CPC, the written objection filed thereto by the plaintiff and also the impugned order. Mr. D.C. Roy, learned counsel for the petitioner submits that the plaintiff had got a decree for cancellation of the sale deed

though some part of the suit land was already recorded in favour of the defendant No.1/appellant/petitioner herein which could be evident from the copy of the Khatian. However, the defendant No.1/appellant/petitioner herein could not produce it at the time of trial and, therefore, sought leave to adduce additional evidence at the appellate stage under Order XLI Rule 27 of the CPC. Learned counsel for the petitioner submits that the case of the petitioner would fall under Clause (aa) of Order XLI Rule 27 of the CPC. Therefore, despite averments made at paragraph No.9 of such application, the learned appellate Court has committed an error in not allowing such application.

5. The relevant provisions of Order XLI Rule 27 of the CPC thereof 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.
(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

6. In this regard, the opinion of the Apex Court in case of *Union of India versus Ibrahim Uddin and another* reported in (2012) 8 SCC 148 at paragraphs 36 to 42 are extracted hereunder as they lay down the guidelines regarding admission of additional evidence at the appellate stage.

“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 XLI 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, 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. (Vide: K. Venkataramiah v. A. Seetharama Reddy & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul Khader v. Rami Reddy & Ors., AIR 1979 SC 553).

37. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

38. Under Order XLI, Rule 27 CPC, the appellate Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This 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. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence. [Vide: Lala Pancham & Ors. (supra)].

39. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. 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 as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of sentence, so that it is only where, for any other substantial cause, the Appellate Court requires additional evidence, that this Rule will apply, e.g., when evidence has been taken by the lower Court so imperfectly that the Appellate Court cannot pass a satisfactory judgment.

42. Whenever the appellate Court admits additional evidence it should record its reasons for doing so. (Sub-rule 2). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this Rule has been properly exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule."

7. This Court is of the considered opinion that the defendant No.1/appellant/petitioner herein in the application to produce the additional evidence in the nature of copy of the Khatian completely failed to satisfy the ingredients which are enumerated under Clause (aa) of Order XLI Rule 27 of the CPC. The defendant No.1/appellant/petitioner herein has not been able to establish that 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. At the appellate stage parties can only be allowed to adduce additional evidence if any of the conditions stipulated under Order 41 Rule 27 is satisfied. Since the defendant No.1/appellant/petitioner herein failed to satisfy the ingredients to invoke provisions of Order XLI Rule 27 of the CPC, the order of the learned appellate Court does not suffer from any errors of jurisdiction calling for interference under Article 227 of the Constitution of India.

8. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ