

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10056 of 2004

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1. Kameshwar Pandit
 2. (1) Mahendra Pandit (son)
(2) Suresh Pandit (son)
(3) Charitra Pandit @ Chalitra Pandit (son)
(4) Asho Devi (daughter) W/o Bhadani Pandit
(5) Champa Devi (daughter) W/o Ramashish Pandit
(6) Sharo Devi (daughter) W/o Krishna Pandit
(7) Sabitri Devi (daughter) Widow of Mahadeo Pandit
(8) Punia Devi (daughter) (widow of Mahadeo Pandit sl. Nos. 1,2 and 3 are residents of village Samachak, P.O. Barbigha P.S. Barbigha, Sheikhpura. No 4,5 and 8 are residents of villae Pawarganj, Bageshwari Road P.O. Nai Godam, Gaya. No. 8 resident of village Sukar Sao Talab, P.O. Sheikhpura, Sheikhpural
 3. Ramnath Pandit son of Late Ganaury Pandit

....Plaintiffs/Appellants/petitioners

Versus

1. Sachidanand Singh
2. Lalo Singh @ Dharmraj Singh both sons of Ramashray Singh resident of village Sonpur, P.S. Barbigha, Sheikhpura

...Defendants/Respondents

Respondents 1st set

3. Rameshwar Pandit son of Late Janglee Pandit
4. Dukhi Pandit son of Late Ganaury Pandit both resident of village Mahadeoganj, Sonachak, P.S. Barbigha, Sheikhpura

...Plaintiffs/Appellants/Respondent 2nd set

...Respondents

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Appearance :

For the Petitioner/s : M/S Jitendra Kishore Verma,
Praveen Kumar
Anjani Kumar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 14-08-2015

Despite notice no one has appeared on behalf of the defendant-respondent(s).

Heard Mr. Jitendra Kishore Verma for the plaintiff-petitioners.

The writ application has been filed aggrieved by the order dated 22.11.2003 whereby the appellate court rejected the petition filed under Order 41 Rule 27 of the Code of Civil Procedure (CPC) for permitting the appellant(s) to

adduce additional evidence.

Title Suit No. 27 of 1999 was filed by the plaintiff-petitioner(s) for a decree of permanent injunction restraining the defendant(s) from dispossessing of the plaintiff(s). Alternatively, a prayer was made to recover or restore the possession of the plaintiff(s) over the subject property, if found dispossessed during the pendency of the appeal. The title over the suit land was claimed by virtue of a sale deed executed on 29.03.1935 in favour of the ancestor of the plaintiff(s) with respect to the suit land. During the pendency of the suit, as would appear from the impugned order, some pages of the sale deed dated 29.03.1935 were filed by the plaintiff(s). The trial court by order dated 22.05.2000 directed for keeping the document (front page of the sale deed) in safe custody of the court. However, inadvertently the same escaped the attention of the court as well as the plaintiff(s) and the judgment was rendered non suiting the case of the plaintiff(s) on the ground that nothing was produced to demonstrate the title of the plaintiff(s) over the suit land. The plaintiffs aggrieved thereby filed M.T.A. No. 27 of 2002 in which a prayer was to permit the appellant(s) to exhibit the sale deed already in the custody of the trial court. The same was considered and rejected on the solitary ground that under Order 41 Rule 27 of the Code the appellate court can permit such additional evidence only if the same was filed before the trial court and rejected/refused to be taken on record as evidence.

Mr. Verma has relied on Clause (aa) of Order 41 Rule 27 of the Code as also Clause (b) thereof in order to submit that the appellate court erroneously failed to consider those provisions which enable the appellate court to permit production of additional evidence if the cause of justice is subserved. For better appreciation, this Court would extract the Order 41 Rule 27 CPC in extenso:-

“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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

On perusal whereof it appears that the parties seeking to produce additional evidence is also required to establish 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. Clause (b) there of enables the appellate court to permit such production of additional evidence if in the opinion of the appellate court such additional evidence to be produced or any witness to be examined, enables the appellate court to pronounce judgment effectively resolving the

dispute between the parties or for any other substantial cause. The purpose is to do complete justice between the parties. It may not be forgotten that the sale deed is the basis of the claim of the plaintiffs in the suit. Although provisions in the Code are clear and unambiguous but Mr. Verma has also relied on Wadi Vs. Amilal & Ors (2002 (4) PLJR SC 121) to support the aforesaid contention wherein the Apex Court held as under in paragraph 7:-

7. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court cure a lacuna or fill up a gap in a case. The exception to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with Clause (b) which is an enabling provision. It says that the if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary. Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

I have perused the order. The learned appellate court has only referred

to Clause (a) of Rule 27 to reject the application. The other provisions of Rule 27 appear to have escaped the attention of the court. This has probably resulted in passing the impugned order which is not in accordance with law. There is no consideration in the light of the other rule-provisions.

Counsel for the petitioner has fairly taken a stand that the plaintiffs-appellants will not pray for production of additional evidence in the shape of mutation receipt as those do not appear to have been filed at the trial.

In the light of discussions made above, the application is allowed. The order dated 22.11.2003 passed by the appellate court is set aside. The appellate court will now re-consider the request of the plaintiffs as contained in Annexure-3 and pass a fresh order.

(Kishore Kumar Mandal, J)

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