

Party Name : JADU DEBBARMA & ANR Vs SABITRI DEBBARMA (NOATIA) & ORS

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA

This petition has been directed against the order dated 27.05.2015 whereby the learned lower appellate Court has dismissed the application filed by the petitioner for leading additional evidence.

The suit against which the appeal has been filed was decided on 26.09.2014. The appeal was filed on 22.11.2014 and thereafter, the appeal was fixed for hearing and on 27.05.2015 the learned counsel for the appellant filed an application purportedly under Order XLI Rule 27 of the Code of Civil Procedure.

The relevant paragraphs of the judgment reads as follows:

The plaintiffs filed this suit for recovery of possession of the suit land.

2. The case of the plaintiffs, in short, is that they are three sisters and one brother. Judha Kumar Debbarma was their father who died on 05-02-1993 leaving behind the plaintiffs and his wife. The wife of Judha Kumar Debbarma was also died on 12-06-1994. Said Judha Kumar Debbarma was the owner of land measuring 5.38 acres of Mouja - Ful Kumari, Khatian No.1592 and the said land is the suit land mentioned in Schedule "A" and Schedule "B" of the plaint. According to the plaintiffs the suit lands were khash tilla land and were lying vacant. Judha Kumar Debbarma made clear the jungle from the suit land and constructed dwelling hut in one portion of the suit land. Also started cultivating the rest portion of land planting various trees. The Collector, South Tripura gave allotment of the suit land to said Judha Kumar Debbarma in the year 1982 and accordingly, a Khatian No.1592 was prepared in the name of Judha Kumar Debbarma. The plaintiff No.4 after death of his parents had been residing and possessing the suit land since May, 2007. In the month of May, 2007 the dwelling hut of Jayanta Debbarma was destroyed by a storm and as such, he started residing with the plaintiff No.3 and for the aforesaid incident of Allotment Order as well as Khatian were lost and as such, the plaintiffs applied for copy of Allotment Order and Khatian before the Collector, South Tripura. On 16-01-2008 at about 08-00 a.m. The defendants illegally entered into the suit land and cut down some valuable trees. The plaintiffs informed the matter to the local Officer-in-charge as well as the Members of Gaon Panchayat. On 20th Jaishtha, 1419 B.S. defendants again entered into the suit land and started making rubber plantation over the suit lands. Hearing the fact, the plaintiffs rushed to the suit land and found that rubber plantation were planting by the defendants. Despite objection of the plaintiffs, they continued their work and for this reason the plaintiffs filed this suit.

3. Suit was duly registered. Summons were issued. Defendants also appeared and contested the suit by filing their written statement."

Order XLI Rule 27 clearly lays down that no party can be permitted to lead additional evidence whether oral or documentary at the appellate stage except under 3(three) circumstances; firstly, when the Court for which the appeal is preferred has refused to admit evidence which ought to have been admitted; secondly, where the parties seeking to lead additional evidence establishes that despite exercise of due diligence such evidence was not within its knowledge or where even exercise of such due diligence the said evidence could not be produced by him before the time of passing of the decree and lastly, the appellate Court can require any document to be produced if that document is necessary to enable it to pronounce any judgment or any other substantial question. The application filed by the petitioner does not fall under any of these 3(three) categories. No grounds have been given why the documents were not applied for earlier. There is not even a whisper that the petitioner was acting diligently. The provisions of Order XLI Rule 27 cannot be brought to the aid of an indolent litigant who does not even care to establish the grounds for leading additional evidence.

In this view of the matter I have no other option but to dismiss the petition which is, accordingly, dismissed.