

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.Nos.5951 & 5969 of 2012

COMMON ORDER:

The appellant/plaintiff in A.S.No.1 of 2011 is the revision petitioner.

The appellant filed I.A.No.19 of 2011 under Order 41 Rule 27 and I.A.No.20 of 2011 under Order 16 Rule 21 of CPC for additional evidence and summoning the witnesses. Through the orders impugned in the Civil Revision Petitions, the appellate Court rejected both the prayers. Hence, the Civil Revision Petitions.

Mr.Srinivas Rao contends that the normal procedure is to take up the applications for hearing along with appeal and in the case on hand by taking these applications independently, the appellant/revision petitioner is subjected to prejudice and there is no complete consideration of the issues on hand. He places strong reliance on the decision reported in ***Shyam Gopal Bindal & Ors. V. Land Acquisition Officer & Anr.***¹

I have perused the order under revision. *Prima facie*, this Court is of the view that the first contention raised by Mr.Srinivas Rao namely that the applications ought to have

¹ AIR 2010 SC 690

been taken up and heard along with the appeal is untenable, inasmuch as the appellate Court had taken up for consideration of these prayers at the instance of the revision petitioner. After being unsuccessful in persuading the appellate Court, this argument is not available. Therefore, the first argument is rejected.

Adverting to the ground that the case is made out for permitting additional evidence under Rule 27 Order 41 of CPC is equally untenable inasmuch as the suit is one for perpetual injunction. The revision petitioner/appellant was unsuccessful before the trial Court. The issue before the appellate Court is whether the revision petitioner satisfies the three ingredients namely:

“Production of additional evidence in Appellate Court:- 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”

for grant of perpetual injunction or secondly whether the judgment and decree in the appeal is warranting interference or not.

The effort either for adducing additional evidence or summoning the witnesses is rejected for valid reasons.

Therefore, no ground is made out warranting interference of this Court under Article 227 of Constitution of India.

Hence, the Civil Revision Petitions fail and accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 28.08.2018
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