

HIGH COURT OF CHHATTISGARH, BILASPURSecond Appeal No.286 of 2010

1A. Dhorjiya Bai, Aged about 60 years, W/o Tulsiram

E. Shivkumar, aged about 28 years, S/o Tulsiram

Both R/o Village Beljhiriya, Thana and Tahsil Marvahi, Distt. Bilaspur
(Defendants)
---- Appellants

Versus

1. B. Lalluram, aged about 36 years, S/o Tulsiram

C. Ramkumar, aged about 34 years, S/o Tulsiram

D. Munna, aged about 30 years, S/o Tulsiram

F. Gudda, aged about 19 years, S/o Tulsiram

G. Koushaliya Bai, aged about 40 years, W/o Harisingh, D/o Tulsiram

H. Rajkumar, aged about 38 years, W/o Budhhusingh, D/o Tulsiram

I. Jankibai, aged about 33 years, W/o Parsuram, D/o Tulsiram

All R/o Village Baljiriya, Thana & Tahsil Marvahi, Distt. Bilaspur (C.G.)
(Defendants)

2. Kanyavati, aged about 40 years, D/o Choturam Bramhin, R/o Village
Koda, Tahsil Koda, Thana Manendragarh, Distt. Koriya
(Plaintiff)

3. State of Chhattisgarh, through Collector, Koriya, Baikunthpur
---- Respondents

For Appellants / Defendants No.1.A and E: -

Mr. Shalvik Tiwari, Advocate on behalf of Mr. Parag Kotecha,
Advocate.

For Respondents No.1.B, C, D, F, G, H and I / Defendants: -

Mr. C.K. Sahu, Advocate.

For Respondent No.3 / State: -

Mr. Ravi Kumar Bhagat, Deputy Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

29/06/2021

1. Proceedings of this matter have been taken-up through video conferencing.
2. This second appeal preferred under Section 100 of the CPC by the appellants herein / defendants No.1.A & E was admitted for hearing on 18-1-2021 by formulating the following substantial question of law:-

“Whether the First Appellate Court is justified in not deciding the application under Order 41 Rule 27 of CPC filed by the plaintiff and dismissing the appeal by recording a finding perverse to the record?”

[For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the suit before the trial Court.]

3. The suit filed by the plaintiff was decreed on 28-1-2006 against which the defendants preferred appeal on 13-6-2006 and thereafter filed application under Order 41 Rule 27 of the CPC on 7-5-2008 for admission of additional documents, but thereafter, the appeal was heard on merits on 13-2-2009 and ultimately, judgment was pronounced on 26-2-2009, but the application under Order 41 Rule 27 of the CPC, though referred by the first appellate Court in the judgment, but, was not decided finally and the appeal was dismissed by the first appellate Court against which this second appeal has been preferred and substantial question of law has been formulated which has been set-out in the opening paragraph of this judgment for the sake of completeness.
4. Mr. Shalvik Tiwari, learned counsel appearing for the appellants herein / defendants No.1.A and E, would submit that the first appellate Court went wrong in not considering the application under Order 41 Rule 27 of the CPC and not permitting the appellants herein to admit additional documents and kept the application pending and decided

the first appeal itself and dismissed the same which resulted in failure of justice in absence of determination of the application under Order 41 Rule 27 of the CPC which runs contrary to the decision rendered by the Supreme Court in the matter of Malayalam Plantations Limited v. State of Kerala and another¹ and therefore the judgment & decree of the first appellate Court deserve to be set aside.

5. Mr. C.K. Sahu, learned counsel appearing for respondents No.1.B, C, D, F, G, H and I herein / defendants, would support the impugned judgment & decree and oppose the second appeal.
6. True it is that the application under Order 41 Rule 27 of the CPC was filed on 7-5-2008 seeking admission of additional documents. Though the first appellate Court referred the application, but did not decide it finally this way or that way and the first appeal came to be dismissed.
7. In Malayalam Plantations Limited (supra), their Lordships of the Supreme Court have clearly held that application under Order 41 Rule 27 of the CPC ought to have been decided after hearing the appeal on merits and thereafter the Court could have proceeded to decide the appeal finally, but that has not been done in the present case and keeping the application pending and dismissing the appeal on merits certainly resulted in failure of justice. Their Lordships further held that when an application for reception of additional evidence under Order 41 Rule 27 of the CPC was filed by the parties, it was the duty of the Court to deal with the same on merits. It was observed as under: -

“15. In view of the above provision, in our opinion, when an application for reception of additional evidence under Order 41 Rule 27 of CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits. The above principle has been reiterated by this Court in

1 (2010) 13 SCC 487

*Jatinder Singh v. Mehar Singh*² and *Shyam Gopal Bindal v. Land Acquisition Officer*³.

16. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.

18. In the light of the separate application filed under Order 41 Rule 27 CPC for reception of additional evidence by both sides, it is for the High Court to consider and take a decision one way or other as to the applicability of the same and decide the appeal with reference to the said conclusion. In this view of the matter, we refrain from going into the merits of the materials placed by both sides and it is for the High Court to consider and take a decision one way or other as per the mandate of the said provision.”

8. Reverting to the facts of the present case in the light of the principle of law laid down by the Supreme Court herein-above, it is quite vivid that the first appellate Court has committed illegality in not deciding the application under Order 41 Rule 27 of the CPC after hearing the appeal on merits and dismissed the appeal.
9. Accordingly, the judgment and decree passed by the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court for hearing the appeal as well as the application under Order 41 Rule 27 of the CPC afresh strictly in accordance with law. It is made clear that this Court has not expressed any opinion on the merits of the appeal and even has not expressed any opinion on the application

² (2009) 17 SCC 465

³ (2010) 2 SCC 316

under Order 41 Rule 27 of the CPC and all questions are left and kept open to be considered by the first appellate Court. Since the appeal was filed on 13-6-2006, the first appellate Court is directed to consider and dispose of the appeal and the application after hearing the parties within a period of three months from the date of receipt of certified copy of this order.

10. The second appeal is allowed to the extent indicated herein-above.

No order as to cost(s).

11. Records be sent back to the first appellate Court forthwith.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma