

23.8.2023

ct. 236

sk,sl.26

C.O. 369 of 2012
CAN 1/2016,CAN 2/2019
Lake Town Association
-vs-
Haridas Biswas

Mr. Syed Nurul Arefin
...for the petitioner.

This application under Article 227 of the Constitution of India impeaches the Order No. 36 dated 18th January, 2012 passed by the learned Additional District Judge, 7th Court at Barasat in Title Appeal No. 76 of 2005 rejecting thereby the prayer of the petitioner to adduce additional evidence. It was turned down as the learned First Appellate Court was not convinced that despite exercise of due diligence the appellant could not produce the document. According to learned First Appellate Court the petitioner could have produced the document before the learned trial court. That was the sole reason for dismissing the petition under Order 41 Rule 27 of the Civil Procedure Code.

Mr. Arefin, learned counsel for the petitioner submits that the document in question is the land-used map which would demonstrate that the disputed portion of the property involved in the suit was actually allotted in favour of the petitioner-association by the paramount title holder.

Upon perusal of order impugned I find that the petitioner in course of trial, the summoned the Urban Development Authority to produce the document but the competent authority could not produce the same. Subsequently, during pendency of the appeal it was ascertained that the document is in the custody of Kolkata Metropolitan Development Authority. It is further submitted that K.M.D. A. was not willing to hand out a copy of the document duly authenticated.

Under such circumstances, I do not find any reason to express my agreement with the view of learned First Appellate Court. There was no lack of due diligence on the part of the petitioner. Hence for effective adjudication of appeal being Title Appeal No. 76 of 2005 an opportunity should be given to the petitioner to prove the case by adducing additional evidence. The order impugned is set aside.

Learned First Appellate Court is directed to allow the petitioner to bring competent witness along with the land-used map, the document before the court to adduce additional evidence.

The revisional application is thus disposed of.

Let a copy of this order be sent down to the learned counsel below for necessary compliance.

(Siddhartha Roy Chowdhury, J)