

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS**

**FMAT 482 OF 2022
WITH
CAN 1 OF 2022**

**Patit Paban Jana
Vs.
Animesh Kumar Chandra & Ors.**

Appearance:

For the Petitioners : **Mr. Amit Baran Dash, Adv.
Ms. Ankana Sarkar, Adv.**

Judgment On : **07.07.2023**

PRASENJIT BISWAS, J.:

The instant appeal arises from a judgment and decree dated 30.08.2022 passed by the learned Additional District Judge, 2nd Court at

Contai in Title Appeal No. 18 of 2013 setting aside the judgment and decree dated 29.05.2013 passed by the learned Civil Judge (Junior Division) 1st Court at Contai, Purba Medinipur in Title Suit No. 25 of 2011.

Plaintiffs/Respondents (in this case) filed the suit before the Trial Court for declaration and injunction and for eviction of the defendants from the subject property. It is the case of these plaintiffs/respondents that their predecessor in interest Angurbala Chandra never executed any sale deed in favour of the defendants/appellants (in this case). They claimed that the deed of sale to be void contending that the original owner never intended to sale the subject property. It is the specific stand of these plaintiffs/respondents that Angurbala inducted the defendants/appellants on the case property as tenants and when question of making tenancy agreement arose the defendants/appellants (in this case) misrepresented Angurbala and procured her signature upon an instrument of sale dated 26.06.2000 and subsequently registered it. The 1st Appellate Court remanded the suit to the trial court with direction to try the suit in view of pleadings and evidence already adduced upon consideration of additional evidence as sought to be admitted by the appellants

It is the specific stand of the defendant/appellant (in this case) that transfer of the suit property was well within the knowledge of husband and sons of Angurbala and all of them signed on the deed as witnesses. They denied about the tenancy in the case property at any point of time.

A point is sought to be taken before us that the first appellate court is erred in law remanding the case allowing the application under Order 41 Rule 27 of CPC filed by the plaintiffs/respondents without considering

the fact that the registration of the deed executed by Angurbala is not disputed by them.

The additional evidence was sought to be adduced by the appellants that at the time of registration of the deed executed by Angurbala, she was hospitalized from 23.06.2000 to 27.06.2000 and plaintiffs/respondents intended to place documents relating to hospitalization of Angurbala for that period. We are concurring with the observation of the First Appellate Court that the appellants should get scope to agitate about the validity of execution and registration of the deed in question executed by Angurbala when it is claimed that the registration of the deed is shrouded with cloud.

We are not unmindful that the appeal court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court but the situation will be different if the court itself feels that the evidence is required to do justice between the parties. The general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but section 107 CPC which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. For such purpose conditions described under Order 41 Rule 27CPC should be existing. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

We, thus, do not find any merit in the instant appeal or an involvement of the substantial question of law.

However, it is observed and held that we have not expressed anything on merits of the documents permitted to be brought on record as additional evidence and it would be the trial court to deal with the same in accordance with law and on merits.

The appeal is dismissed with direction that the trial court shall make every endeavor to dispose of the case within six months from the date of communication of this order without giving unnecessary adjournments to either of the parties.

There shall, however, be no order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)