

Item-
2. 19-02-2026

CO 2730 of 2024

sg Ct. 19

Karim Molla & Ors.
Versus
Daulat Ali Molla & Ors.

Mr. Anirban Mitra
Mr. Amit Halder
Mr. Amit Roy
...for the petitioners
Mr. Diptomoy Talukder
Ms. Mahua Biswas
... for the opposite parties

Though the matter is appearing under the heading “Extension of Interim Order”, with the consent of the learned Advocates for the respective parties, the civil revisional application is taken up for final hearing by treating the same as on the day’s list.

This application under Article 227 of the Constitution of India is at the instance of the defendants in a suit for partition and is directed against an order being No. 109 dated April 22, 2024 passed by the learned Additional District Judge, Fast Track 3rd Court, Basirhat, North 24 Parganas, wrongly described in the certified copy of the order impugned as Additional Sessions Judge, Fast Track 3rd Court, Basirhat in Title Appeal No. 14 of 2010.

By the order impugned, the application dated 11th March, 2024 filed by the opposite parties herein praying for leave to file the certified copy of the RS record of rights stood allowed subject to payment of cost.

The opposite parties filed a suit for partition, being Title Suit No. 24 of 1999. The said suit stood dismissed by a

judgment and decree dated 16th December, 2009, passed by the learned Civil Judge (Senior Division), Basirhat. Being aggrieved by the judgment and decree passed by the learned Trial Judge, the opposite parties herein preferred an appeal being Title Appeal No. 14 of 2010. The opposite parties herein took out an application praying for leave of the Court to file the certified copy of the RS record of rights in respect of RS khatian nos. 29, 31, 32, 33, 34, 35, 542 and 624. Such application was allowed by the impugned order.

Mr. Mitra, learned Advocate appearing for the petitioners, submits that after conclusion of the argument of the parties in title appeal, the application was filed by the opposite parties praying for leave to produce the RS record of rights. He submits that though the relevant record of rights were in the possession of the opposite parties at the time of trial in the title suit, but the same were not produced on the plea that the recording in the RS record of rights was erroneous. He further submits that the application was filed under Section 151 of the Code of Civil Procedure. He further submits that when there is a specific provision in the Code of Civil Procedure for adducing additional evidence at the appellate stage, an application under Section 151 of the Code of Civil Procedure is not maintainable in the eye of law seeking leave to produce the additional evidence at the appellate stage.

The learned Advocate appearing for the opposite parties, submits that through inadvertence, the RS record of rights in respect of the plots in question was not produced at the time of trial. He submits that immediately after it came to

the notice of the opposite parties of such defect, steps were taken to produce the same and for such purpose, the application was filed praying for leave to produce the same at the appellate stage. He submits that the learned Judge of the Appellate Court, after considering the materials on record, was of the view that the said documents are necessary for the purpose of adjudication of the appeal and for such reason, the order impugned calls for no interference by this Court.

Heard the learned Advocates for the parties and perused the materials placed.

Order 41 Rule 27 of the Code of Civil Procedure enables the parties to an appeal to produce additional evidence at the appellate stage whether oral and documentary subject to certain conditions which are enumerated in clauses (a), (aa) and (b) of sub-Rule (1) of Rule 27 of Order 41. For the purpose of deciding the dispute involved in the said revisional application, it would be beneficial to recapitulate the Order 41 Rule 27 of the Code of Civil Procedure for which the same is extracted hereinafter:

(1) 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.

The case on hand does not fall within the clause (a) of the sub-Rule (1) of Order 41 Rule 27 as it is not the case of the opposite parties that the learned Trial Judge has refused to admit the evidence which ought to have been admitted.

The learned Advocate appearing for the petitioner would vehemently contend that the opposite parties could not satisfy the Appellate Court that notwithstanding the exercise of due diligence, the documents sought to be produced before the Appellate Court could not be produced by him before the Trial Court.

After going through the application filed by the opposite parties, this Court finds that it has been specifically stated that, at the time of hearing of the appeal, it was pointed out by the learned Advocate for the respondent/petitioner herein that, the appellants/opposite parties herein have not produced the copies of the RS record of rights. The opposite parties have specifically stated that through inadvertence, the copies of the RS record of rights were not produced at the stage of trial.

Even if the argument of Mr. Mitra is accepted that the opposite parties failed to prove that notwithstanding the exercise of due diligence, the RS record of right could not be

produced by him at the trial stage, the provisions laid down under clause (b) of sub-Rule (1) of Rule 27 Order 41 cannot be glossed over. It states that where 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 documents to be produced or witness to be examined.

Thus, it is the requirement of the Court to enable it to pronounce judgment. The expression “to enable it to pronounce judgment”, has been interpreted by the Hon’ble Supreme Court to mean to pronounce a judgment in an effective manner so as to render justice to the parties.

The learned Judge after noting that there is no prayer for adducing evidence in respect of the khatians, allowed the opposite party to file such documents only on the ground that it will not cause prejudice to the other side.

An appeal is to be decided only on the evidence available on record and only under certain exceptional circumstances parties may be allowed to produce additional evidence.

However, in the case on hand, the learned Judge of the Appellate Court without returning any finding as to whether the documents sought to be produced will enable the Appellate Court to pronounce judgment allowed the opposite party to file the documents, which is impermissible.

The application though does not bear any caption but the same is in effect an application praying for leave to produce additional evidence before the Appellate Court and

the same is in substance an application under Order 41 Rule 27 of the Code of Civil Procedure.

At this stage, it would be relevant to point out that whether some documents are required for the purpose of enabling the Appellate Court to pronounce judgment or for any other substantial cause can be decided only at the time when the appeal is taken up for hearing. It is well-settled that an application under Order 41 Rule 27 CPC has to be heard along with hearing of the appeal and cannot be decided in isolation thereof.

That apart, by the order impugned, the application under Order 41 Rule 27 was allowed by keeping the appeal pending. For all the reasons as aforesaid, this Court is inclined to interfere with the order impugned.

For the reasons as aforesaid the impugned order is set aside.

The application dated 11th March, 2024 is restored to the file of the learned Additional District Magistrate, Fast Track 3rd Court at Basirhat and the learned Judge of the Appeal Court is requested to hear out the said application along with the title appeal no.14 of 2010.

It is, however, made clear that the observations made hereinbefore, are only for the purpose of supporting the ultimate conclusion.

After this order is passed, the learned Advocate for the opposite party prays for a direction upon the Appellate Court to dispose of the Title Appeal expeditiously.

The learned Judge of the Appellate Court is requested to make an endeavour to dispose of the appeal as

expeditiously as possible but preferably within a period of six months from next date fixed without granting any unnecessary adjournments to either of the parties.

With the above directions, CO 2730 of 2024 stands allowed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)