

Ghurahu Vs. Civil Judge (Senior Division), Small Cause Court and ors.

Ghurahu Vs. Civil Judge (Senior Division), Small Cause Court and ors.

SooperKanoon Citation : sooperkanoon.com/489404

Court : Allahabad

Decided On : Jul-27-2004

Reported in : 2005(1)AWC544

Judge : Krishna Murari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 27

Appeal No. : C.M.W.P. No. 5950 of 2000

Appellant : Ghurahu

Respondent : Civil Judge (Senior Division), Small Cause Court and ors.

Advocate for Def. : Rajeev Chaddha, Adv. and ;Manoj Kumar, S.C.

Advocate for Pet/Ap. : R.C. Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Krishna Murari, J.

1. This petition is directed against the order dated 13.12.1999 passed by Civil Judge (Senior Division), Gorakhpur in Civil Appeal No. 63 of 1993 rejecting the application under Order XLI, Rule 27, C.P.C. filed by the petitioner to produce

certain additional evidence.

2. Briefly stated, the facts of the case are as follows :

The petitioner and respondent No. 4 filed Original Suit No. 342 of 1985 for partition claiming two third share in the property in dispute. The trial court vide judgment dated 27.3.1993 dismissed the suit. The petitioner filed civil appeal before the respondent No. 1. During pendency of the appeal, an application under Order XLI, Rule 27 of the C.P.C. dated 11.1.1999 was filed by the petitioner to bring on record some additional evidence. The lower appellate court vide order dated 13.12.1999 dismissed the said application. Aggrieved by the same, the petitioner has preferred this writ petition.

3. I have heard Sri R. C. Singh, learned counsel for the petitioner and Sri Manoj Kumar holding brief of Sri Rajeev Chaddha, learned counsel for respondent Nos. 2 to 5.

4. Order XLI, Rule 27 of the C.P.C. provides for production of additional evidence in appellate court. This rule is an exception to the general principle that appellate court should not travel outside the record of the lower court. The rule lays down the conditions under which the appellate court is empowered to allow the additional evidence either oral or documentary to be taken on record. The rule specifies three conditions under which the appellate court is empowered to allow production of additional evidence.

(i) if the evidence in question was tendered in lower court but was improperly or illegally rejected by it.

(ii) the party seeking to produce additional evidence is required to establish that in spite of exercise of due diligence, such evidence was not within his knowledge or even after exercise of due diligence, the same could not be produced by him at the time when the decree appealed was passed against him.

(iii) the appellate court itself requires the additional evidence to enable to it to pronounce judgment, or for any other substantial cause.

5. From a perusal of the aforesaid rule, it is clear that any party seeking admission of additional evidence at the appellate stage is required to establish that such evidence was not within his knowledge or even after exercise of due diligence, the same could not be produced by him before the trial court.

6. It is thus clear that in the absence of cogent and satisfactory reasons conforming to the contingencies mentioned in the rule, the additional evidence cannot be taken on record at the appellate stage.

7. In the above background, a_ perusal of the application moved by the petitioner for production of additional evidence goes to show that no cogent reason has been given for not filing the documents, sought to be adduced as additional evidence in appeal, before the trial court.

8. It has nowhere been stated in the application that the said documents were not within his knowledge or why the same could not be filed before the trial court or the said documents came within his knowledge after passing of the decree by the trial court. The only reason mentioned in the application is that due to lack of advice by the counsel to file said documents, the same could not be filed before the trial court and the documents being public documents are liable to be admitted as additional evidence.

9. The reason mentioned in the application does not stand the test of any of the conditions specified under the rule for production of additional evidence. The lack of advice by the counsel or wrong advice by the counsel cannot be held to constitute sufficient ground for admitting additional evidence at the appellate stage. Holding otherwise would result in allowing any party to file fresh evidence merely to fill in the lacuna in evidence under the pretext of lack of advice or wrong advice by the counsel. Similarly, merely because the documents sought to be adduced as additional evidence are copies of public documents cannot be a valid reason for admitting them as additional evidence.

10. From the foregoing discussions, it is clear that the application of the petitioner for adducing additional evidence was rightly rejected by the court below and the order impugned in the writ petition does not suffer from any infirmity.

11. In the result, the writ petition fails and is dismissed.

12. However, in the facts and circumstances of the case there shall be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com