

Hanuman Mal Vs. Jaskaran and ors.

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SooperKanoon Citation : sooperkanoon.com/768616

Court : Rajasthan

Decided On : Jul-12-2001

Reported in : 2002(2)WLC351; 2001(4)WLN703

Judge : Prakash Tatia, J.

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

Appeal No. : S.B. Civil Misc. Appeal No. 550 of 2001

Appellant : Hanuman Mal

Respondent : Jaskaran and ors.

Advocate for Pet/Ap. : S.D. Vyas, Adv.

Disposition : Appeal dismissed

Judgement :

Hon'ble Tatia, J.

1. Heard learned counsel for the appellant. Perused the order dated 11.12.2000 by which the learned First Appellate Court allowed the application of the respondent under Order 41 Rule 27 CPC and remanded the matter back to the trial court.

2. Learned counsel for the appellant vehemently argued that none of the condition of Order 41 Rule 27 CPC has been satisfied, more particularly, when the facts

reveal that the party seeking permission to produce additional evidence was negligent inasmuch as the documents were within the knowledge of the respondent party. The copies of the documents were placed on record before the trial court but they did not choose to prove those documents and when trial court has drawn an adverse inference against the respondent then the order of the Appellate Court permitting additional evidence under Order 41 Rule 27 CPC is clearly beyond the scope of order 41 Rule 27 CPC. I perused the impugned order and order 41 Rule 27 CPC Learned Appellate Court observed that ^esjs er esa ;s izys[k oLrq% U;k; fj;y tfVLVlds fy, vkR;ko';d gSAand also observed that ^oLrq% U;k;kFkZ ,sls izys[kvko';d gS rks U;k; fgr esa oLrq% U;k; ds fu'iknukFkZ ,sls izys[kksa dksfjdk MZ ij fy;s tkus dh vuqefr ns nh tkuh pkfg,A**

3. Order 41 Rule 27 CPC is an enabling provision for production of oral and documentary evidence, which was not produced or which was not admitted in evidence before the trial court, in the given facts and circumstances of the case, as provided under Rule 27 of the Order 41 CPC. It is true that in the trial, if party do not want to place on record any document or party do not want to prove any document, it is choice of the party and that creates a valuable right to the other party. But if all conditions are satisfied then the Appellate Court has jurisdiction to permit additional evidence under Order 41 Rule 27. Not only [his but the appellate court has been vested with powers itself to require production of documents or to examine the witnesses for any other substantial cause.

4. The above any other substantial cause are also be a judicial cause and according to learned counsel for the appellant this cannot be read bereft of the preceding part under provision of law and it should also be read in consonance with the aims and objects of the sub-clause (1) and sub-clause (aa) of Rule 27 of Order 74. It is true that the entire provision of law is required to be construed in such a manner that one should not destroy the meaning of other and the provisions of law are required to be construed in such a manner which advance the meaning of alt the provisions of law. Here in this case, the Appellate Court observed that the documents though were placed on record but were not exhibited and proved and it appears that Appellate court was conscious of the fact that

cases are conducted not by the parties but by other authorized agents and advocates. To exhibit and to prove a document normally depends upon the person conducting the case and there may be various reasons for not exhibiting the document already on record for which sometimes litigants even may not be aware of the technicalities of law of exhibited documents and proving the documents. Therefore, it is very difficult to find out whether the party himself was negligent in conducting the case or mere was a wrong discretion of the learned advocates conducting the same in not exhibiting and proving the documents. In these circumstances, if the copies of documents are on record the Appellate Court and if it is found that these documents are required for real justice (substantial justice) and for just decision of the appeal or the suit and when discretion is exercised in favour of permitting the additional evidence under Order 41 Rule 27 then this may fall within the any substantial cause while exercising jurisdiction under further appeal over the order of the Appellate courts.

5. Learned counsel or the appellant further submitted that there is a serious dispute with respect to the authenticity and admissibility of the documents. This matter will be naturally considered by the trial court at a proper stage. When the party producing the documents will try to exhibit the documents, at that time, this objection can be raised by the learned counsel for the appellant.

6. The trial court is directed to decide the suit within six months from the date of communication of this order to [he trial court.

7. Therefore, I am not inclined to interfere with the order passed by the First Appellate Court. Hence, the appeal of the appellant is dismissed.