

Sadhu Ram Vs. Ghasi Ram

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Court : Rajasthan

Decided On : Jan-05-2001

Reported in : 2001(1)WLC596; 2001(4)WLN327

Judge : J.C. Verma, J.

Appeal No. : S.B. Civil Revision Petition No. 983 of 2000

Appellant : Sadhu Ram

Respondent : Ghasi Ram

Disposition : Petition dismissed

Judgement :

J.C. Verma, J.

1. This revision petition is directed against the order dated 9.12.2000 passed by the Additional District Judge No. 6, Jaipur City, Jaipur by which application of the petitioner under order 41 Rule 27 had been dismissed by the Lower Appellate Court in the appeal filed by him. The application was moved by the present revision petitioner under Order 41 Rule 27 CPC, for producing on record by way of additional document, the sale-deed in regard to plot No. 199, Rishi Galav Nagar, Jaipur. It was further stated in the application that he had got his written statement amended in the trial court to the effect that two shops have been constructed on

plot No. 199 which was denied by the plaintiff. The fact of any shops being vacant or being let out were also denied by the plaintiff. He stated that to prove the falsehood of the averments made by the plaintiff, he wants to place on record the sale-deed dated 19.10.1992 of which certified copy had been obtained on 27.12.1999. The lower appellate court had dismissed the application on the ground that this very document was in the knowledge of the applicant revision petitioner, discussion of which had also been made before the trial court. For the reason that from the very beginning he had the knowledge of the same, but still he had not chosen to produce it before the trial court nor any such application was moved; it was observed that the existence and the knowledge of the document being available with the revision petitioner, to allow him to place the document on record at this stage, shall not be in the interest of justice. Being aggrieved against the said order, the revision petitioner had come up in the revision petition with the only submission that the application for producing on record the additional document could not be dismissed at this stage and should have been considered at the time of deciding the appeal itself.

2. Counsel for the petitioner relies on a judgment in the case of Union of India v. Smt. Parvati Devi and Ors. Civil Appeal No. 1425/2000, wherein it was observed, whether the court requires additional evidence for the pronouncement of judgment or not, will depend upon the consideration of the main appeal along with the application for additional evidence in accordance with law and in the light of Order 41 Rule 27, CPC. Application under Order 41 Rule 27 was dismissed which was moved in the first appeal, which appeal had not still been admitted.

3. Counsel also relies on a judgment in the case of Mohan Das v. Bachan Lal 2000 WLC (Raj.) UC 228 wherein it was held that such like applications should be decided with the appeal and not before. A direction was given to the lower appellate court to decide the application under Order 41 Rule 27 CPC along with the appeal itself. To the same effect is the judgment in the case of Bhikharam and Anr. v. Shri Shantilal 1998 WLC (Raj.) UC 740.

4. Counsel for the respondent relies on a judgment in the case of Mohan Singh v. Late Amar Singh : AIR 1999 SC482 wherein it was observed as under:

We have referred to the application for additional evidence filed by the tenant before the Rent Tribunal and the fact that one of the documents said to have been filed along with the application was not filed at that time and interpolated into the records much later. We also find that the application was not given a separate number. The rejection of the application was made part of the order in the main appeal. It would have been better if the application had been given a separate number and an order had been passed thereon separately. But that is not a matter of grave concern. What is to be noted is that in the application, the documents sought to be filed as additional evidence were described vaguely in Paragraph 5 as photo copies of the passport and the ticket. It is absolutely necessary that every application for permission to file additional evidence should contain a list of documents giving full particulars thereof such as date, parties thereto and description. Apart from that each document should also bear a certificate of endorsement made by the counsel or the party that the said document was the one referred to in the affidavit or application of the party. The application must also specify the number of pages of each document filed therewith. Whenever such applications are filed in pending matters, the copies thereof and copies of the documents sought to be filed as additional evidence should be served on the other side after being duly certified as true copies by the applicant or his counsel. Appropriate rules have to be framed in this regard also.

5. Counsel for the respondent also relies on the judgment in the case of Gurdev Singh and Ors. v. Mehnga Ram and Anr. 1997(6) Supreme 147 on the point that the High Court should not ordinarily interfere with the order passed under Order 41 Rule 27 CPC. The facts of the case were that in appeal filed before the Additional District Judge, Firozpur, the application under Order 41 Rule 27 CPC was filed at the final hearing of the appeal which was allowed. The revision was filed against the said order, the Hon'ble Supreme Court had held that the approach of the High Court in revision and with interim stay when appeal was pending before the Additional District Judge was not justified and the High Court should not have interfered in the order which was not within jurisdiction of the appellate court. The reason was obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order 14 Rule 27. If the order was wrong on merits, it would always be open for the respondent to challenge in accordance

with law in the second appeal after the appellate decree is passed.

6. Counsel for the respondent also relies on the authority : [1978]3SCR982 Sher Singh v. Joint Director of Consolidation and Ors., for the proposition that it is not open to the High Court while exercising its jurisdiction under Section 115 CPC to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself. Reliance is also placed in the case of M/s D.L.F. Housing & Construction Co. (P) Ltd. v. Sarup Singh and Ors. : [1970]2SCR368 .

7. The respondent also relies on a judgment in the case of Budha v. Mangal and Anr. WLN (UC) 1974 page 164 where it was held that merely because the plaintiff was not able to obtain the copy of the order of Thikana Court and they had come to know of it after the decision of the case by the trial court, it was held that it cannot be held to be sufficient ground for production of additional evidence. The application for permission to produce additional evidence was disallowed. It was held that the application was rightly rejected under Order 41 Rule 27 CPC as no substantial cause has been made out for allowing the same. It was held that it was not a case of requirement of the court and merely because the plaintiff was not able to obtain the copy of the order of Thikana Court after the decision of the case by the trial court, it cannot be held to be a sufficient ground for production of evidence.

8. After hearing learned Counsel for the parties, it is no doubt true that in normal circumstances, the application under Order 41 Rule 27 ought to have been discussed and decided at the time of hearing of appeal itself and, therefore, the order of the lower appellate court to dismiss the application before hearing the appeal cannot be sustained in view of two single Bench judgments of this Court which fairly cover the point in favour of the revision petition.

9. It has been held by this Court and also it is requirement of law under Order 41 Rule 27 that for an application under Order 41 Rule 27 filed on the appellate stage, such applications to fulfill the requirement and to justify as to why the documents on the evidence being produced was not produced or as to why it could not be produced at the time when the trial was being held. At the time of hearing of

appeal, sufficient reasons for not producing the evidence at the time of trial and for the evidence to be produced before the appellate stage, the court is to convince itself about the conduct of the parties moving such an application for non-production of the same at the relevant time and if it is found that the application of producing additional evidence at the time of hearing of appeal do not fall within the strict compliance of Order 41 Rule 27, in such situation the application is liable to be dismissed.

10. In the present case, even though the trial ought to have and should have decided the application for additional evidence at the time of hearing of appeal and deciding it before such time may not be sustained in the eyes of law as per the number of authorities as quoted above, but while exercising the revisional jurisdiction even if the order is set aside, the same reasons as given by the lower appellate court while dismissing the present application moved under Order 41 Rule 27 CPC cannot be lost sight of. The lower appellate court had categorically observed that this very document was in the knowledge of the applicant during time of trial and it has also been mentioned and discussed during trial and, therefore, there was no reason as to why the same document could not have been produced or was not produced at the trial court. The reasons are sufficient and would have been sufficient even to dismiss the application at the time of hearing of appeal. Even if a direction is given to lower appellate court at this stage to decide the application under Order 41 Rule 27 CPC only on the ground that it should have been decided at the time of hearing of appeal and not before, the reasons as given in the impugned order cannot be lost sight of which according to the court were the justified reasons. It would be a futile exercise to direct the lower appellate court to decide the application at the time of hearing of the case until and unless the reasons now given can be shaken in the ultimate decision of the application. For the similar reasons, as given by the appellate court this Court in the judgment *Budha v. Mangal* (supra) had held that the application under Order 41 Rule 27 CPC can be dismissed on the said reasons and for the grounds identical to the reasons given in the impugned order.

11. For the reasons and discussions mentioned above, even though I hold that the application under Order 41 Rule 27 CPC should have been decided at the final

decision of the appeal i.e. along with the appeal as to adjudicate whether the document so required was necessary for the just decision of the case, but in the circumstances mentioned above, in my opinion, it would be futile to direct the lower appellate court to decide the application once again which application according to him was dismissed on very valid reasons.

12. For the reasons and discussions mentioned above, the revision petition is dismissed.

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