
(2011) 07 AHC CK 0257
In the Allahabad High Court
Case No : Writ Petition No. 38701 of 2011

Dayaram and another	Vs	APPELLANT
Indrawati and another		RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2011) 114 RD 308

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—The present writ petition has been filed on the ground that the petitioners' application for filing further document has been rejected by the Appellate Court.

The petitioners had filed a suit for cancellation of sale-deed executed by one Ayodhya in favour of respondent-defendant No. 1 (Indrawati). The suit was proceeded with. Written statement etc. was filed. However, the said suit was dismissed on 22.12.2010 by the Trial Court.

2. The petitioners thereafter filed an appeal being Civil Appeal No. 4 of 2011 and in that appeal they filed application 18-G under Order XLI, Rule 27 CPC. The said application has been rejected by the District Judge, Siddharthnagar vide its order dated 16.5.2011.

3. Aggrieved by the aforesaid order, the present writ petition has been filed.

4. I have heard Learned Counsel for the petitioners and have perused the order passed by the Appellate Court upon the application of the petitioners under Order XLI, Rule 27 CPC.

5. It is the contention of the petitioners that they rely upon certain documents, being medical report of the mental condition of the executor of the sale-deed and

the order of the High Court in the second appeal as well as CH Form Nos. 41 and 45 apart from certain other revenue records. It has been submitted that the aforesaid documents could not be filed due to the fact that the said documents were given to the Counsel contesting the matter before the Trial Court and he did not file the same. These documents are imperative for the proper adjudication of the case but the Trial Court has erred in not allowing the petitioners to file additional documents.

6. The Court below, while rejecting the application of the petitioners, has noticed that such plea has not been taken even in the memo of appeal and apparently is an after thought to fill in lacuna in the pleadings before the Trial Court. In the Trial Court the petitioners had ample opportunity to present their case but the same was not done and the suit was dismissed. Now at the appellate stage the petitioners want to file these documents, which is not permissible under Order XLI, Rule 27 CPC. The appellate Court has also recorded a finding that such a fact is not even mentioned in the memo of appeal and, therefore, the same cannot be relied upon.

7. The appellate Court placed reliance upon a decision in the case of State of Gujarat and another v. Mahendra Kumar Parshottambhai Desai, 2006 (63) ALR 806 (SC) : 2006 (42) AIC 666 : 2006 (101) RD 143. in which it has been stated to have been held that the lacunas of the trial stage, cannot be filled at the appellate stage.

8. Learned Counsel for the petitioners, on the other hand, has relied upon a decision of this Court in the case of State of Rajasthan v. T.N. Sahani and others, 2001 (92) RD 196 (SC) : 2001 (42) ALR 204. on the ground that the necessity of the document can be seen at the time of final hearing of the appeal and, therefore, the Appellate Court erred in law in not allowing the petitioners to file the documents.

9. The aforesaid decision in the present case, in my opinion, is not applicable, inasmuch as, the findings recorded by the Appellate Court is that the petitioners are trying to file these documents as an afterthought at the appellate stage. The ground taken by the petitioners is that the same could not be filed before the Trial Court due to negligence of their lawyers but this can also not be believed as the Appellate Court has rightly held that the said fact could have easily been mentioned at the first instance, i.e., in the memo of appeal, which has not been done, therefore, it is an afterthought and a dilatory tactics.

10. Upon the aforesaid discussions, I do not see any error in the order dated 16.5.2011, Therefore, the writ petition is mis-conceived and it is, accordingly, dismissed.