
(2020) 06 JH CK 0035
In the Jharkhand High Court
Case No : C.M.P. No. 80 Of 2020

Jhaman Pahan And Ors

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 25-06-2020

Acts Referred:

Code of Civil Procedure, 1908 — Section 107, 151, Order 7 Rule 14(3), Order 41 Rule 27, Order 41 Rule 27(1)(aa)

Citation : (2020) 06 JH CK 0035

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Anil Kumar Sinha

Final Decision : Dismissed

Judgement

1. The present case is taken up through video conferencing.
2. The present C.M.P. has been preferred for setting aside the order dated 17.01.2020 (Annexure-5 to the writ petition) passed by the District Judge-III, Ramgarh in Civil (Title) Appeal No. 02 of 2016 whereby the petition dated 07.01.2020 filed by the petitioners/appellants/plaintiffs under Order VII Rule 14(3) read with Order XLI Rule 27(1)(aa) and section 151 of the Code of Civil Procedure (in short "CPC"), has been rejected.
3. The petitioner nos. 1, 2, 3, 7, 8, the husband of the petitioner no. 4 and the father of petitioner no. 5 and 6 had filed Title Suit No. 203 of 2010 in the Court of Subordinate Judge-I, Hazaribag on 06.10.2010 for seeking reliefs:-
 - i. That on adjudication, it be declared that the suit property is raiyati ancestral khatiyani land of the plaintiffs and defendants 2 to 9 have no right to disturb the plaintiff's possession and the plaintiff's right, title, interest and possession over the suit land be confirmed.
 - ii. That it be declared that Sada Dar-Raiyati Patta dated 18.02.1949 with respect

of land of Khata No. 16, Plot No. 394, area 0.37 acre out of area 0.56 acre is forged and fabricated, illegal improper, null and void and not binding upon the plaintiffs.

iii. That defendants 2 to 9 be restrained from going upon the suit land and to put hindrance in the peaceful cultivating possession of the plaintiffs by an order of permanent injunction.

iv. That any other relief or reliefs to which the plaintiffs are entitled to be passed.

v. Cost of the suit be awarded to the plaintiffs.

4. The Civil Judge (Sr. Div.-I), Ramgarh dismissed the said Title Suit vide judgment dated 31.05.2016 by holding that the plaintiffs failed to adduce cogent evidence to prove their title and possession over the suit land. It was further held that plaintiffs did not produce the alleged Sada Dar-Raiyati Patta and in absence of which, the same cannot be declared to be forged and fabricated. Aggrieved with the said judgment, the plaintiffs preferred Title Appeal No. 02 of 2016 in the Court of Principal District Judge, Ramgarh which is presently pending in the Court of District Judge-III, Ramgarh. During the pendency of the said appeal, the petitioners/plaintiffs filed a petition under Order VII rule 14(3) read with Order XLI rule 27 (1)(aa) and section 151 of the CPC on 07.01.2020 seeking leave to file a document i.e, Khatian, however the said application of the petitioner has been rejected by the impugned order. Hence, the present writ petition.

5. Learned counsel for the petitioners submits that while passing the impugned order 17.01.2020, the learned appellate court failed to consider the object of Order VII Rule 14(3) read with Order XLI rule 27 of the CPC. The learned appellate court while passing the impugned order did not appreciate that the petitioners are the poor rustic persons and they had applied for certified copy of the Khatian, but the same could not be provided by the competent authority. It is further submitted that the learned appellate court also failed to appreciate that the Khatian, which has been filed by the petitioners, is necessary for the proper adjudication of the case of the petitioners. The learned appellate court overlooked the fact which was narrated by the petitioners in the application dated 07.01.2020 that the khatian is old and basic document and was in custody of some other person which was not in the knowledge of the petitioners/appellants and after getting the same, they filed the present petition before the learned appellate court. The Khatian produced by the petitioners before the learned appellate court is in consonance with the 'Teriz' produced by them in course of trial i.e exhibit-2, however since the plot number is not clear from the 'Teriz', it can be correlated with the Khatian of Khata No. 16 in which the plot numbers are already there. The 'Teriz' or index of Record of Rights which shows that land of Khata No. 16 consisting of 30 plots measuring an area of 9.98 acres is recorded in the name of Rijhu Mahto, Gokhul and Diwasi, but it is not clear in respect of suit plot No. 394 under Khata No. 16, though the same is indicated in the Khatian produced by the petitioners before the appellate court.

6. Learned A.C. to A.G. appearing on behalf of the State of Jharkhand opposes the prayer made by the petitioners and submits that the court below has rightly rejected the prayer of the petitioners by passing the impugned order and the same does not warrant any interference of this Court. It is further submitted that the petitioners have failed to prove their due diligence before the court below which is a prime consideration for disposal of an application filed under Order XLI rule 27 of CPC.

7. Heard the learned counsel for the petitioners and the State of Jharkhand. Before coming to the merit of the case, it would be appropriate to go through the provisions of Order XLI Rule 27 of CPC which read as under:

"Order XLI Rule 27-- Production of additional evidence in Appellate Court.--(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.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission."

8. Order XLI Rule 27 delineates that no additional evidence shall be produced by either of the parties in the appellate court. However, three exceptional situations have been provided under which the appellate court may allow such evidence or document to be produced or witness to be examined. Sub-rule 1(a) of Rule 27 CPC permits the production of evidence at appellate stage when the court which passed the decree, has refused to admit evidence which ought to have been permitted. Sub- rule 1(aa) of Rule 27 provides that if even after due diligence, the party seeking to produce additional evidence had no knowledge of the same or the same could not be produced by him at the time of passing of decree, the appellate court may allow for the production of evidence even at the appellate stage. Sub-rule 1(b) of Rule 27 gives discretion to the court to require any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause.

9. In the present case, the petition was filed on behalf of the petitioners was filed under sub-rule 1(aa) and thus they were required to show before the appellate court that the conditions enumerated under the said sub-rule were fulfilled. On

perusal of the petition dated 07.01.2020 filed by the petitioners before the appellate court for producing additional evidence, it appears that the petitioners claimed that the said document i.e. Khatiyani was in the custody of some other person which was not within their knowledge and possession and only after due enquiry and search, they obtained the said document which is very relevant to decide the appeal.

10. The learned court below while passing the impugned order dated 17.01.2020 has observed that Khatiyani is an official document and any party could have obtained the certified copy of the same. It has further been observed that the Khatiyani filed by the petitioners/appellants is not visible. Moreover, the Khata number and the name of the parties are not very much clear and such type of document cannot help the court to come to a logical conclusion in the case. It has also been held that no specific and cogent reason has been assigned by the appellants for not obtaining the certified copy of khatiyani from the concerned office for filing the same in the court below itself.

11. The Hon'ble Apex Court in the case of A. Andisamy Chettiar Vs. A. Subburaj Chettiar reported in (2015) 17 SCC 713 has held as under:-

"12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.

13. In [K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257] this Court has held as under: (SCC p. 261, para 19) "19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction."

14. In [North Eastern Railway Admn. v. Bhagwan Das, (2008) 8 SCC 511] this Court observed thus: (SCC pp. 515-16, para

13) "13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and

limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist."

15. In [N. Kamalam v. Ayyasamy, (2001) 7 SCC 503] this Court, interpreting Rule 27 of Order 41 of the Code, has observed in para 19 as under: (SCC p. 514) "19. ... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal-- it does not authorise any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way."

16. In [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148] this Court has held as under: (SCC p. 171, para 49) "49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

(emphasis in original)

12. Thus, it is a settled law that the provisions of Order XLI Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal. The additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist.

13. I do not find any substance in the argument of the learned counsel for the petitioners that the petitioners were not able to procure the said Khatiyan earlier as it was a public document and the petitioners could have obtained the certified copy of the same from the authority concerned. Although, the petitioners have claimed that the said Khatiyan was within the possession of other person, however they have failed to specify that under whose possession it was lying. Moreover, even if the grounds taken by the petitioners are assumed to be true, they could have obtained the certified copy of the Khatiyan for filing it before the trial court itself and thus they, by their own omission, failed to adduce the said Khatiyan before the trial court for which no relief can be granted to the petitioners. Though the petitioners have asserted in the present writ petition that they had applied for obtaining the certified copy of the khatiyan, yet they have not mentioned as to when the requisition for the same was filed and before

which government officer. Mere assertion without any specific detail in this regard cannot be accepted that the petitioners ever applied for obtaining the certified copy of the khatian. In the application of the petitioners filed in Civil (Title) Appeal No. 02 of 2016 for obtaining leave for producing additional document, there is no such averment that they had applied for certified copy of khatian. Otherwise also, the appellate court has also found that in the Khatiyan so filed by the petitioners, the Khata number and name of the parties are not very much clear and thus the same cannot help the court in deciding the case.

14. Under the facts and circumstance of the present case, I do not find any infirmity in the order dated 17.01.2020 passed by the District Judge-III, Ramgarh in Civil (Title) Appeal No. 02 of 2016. The present C.M.P. is, accordingly, dismissed.