
(2022) 09 JH CK 0009

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2553 Of 2013

Juha Bala Devi And Others

APPELLANT

Vs

Rajendra Mahto

RESPONDENT

Date of Decision : 02-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Civil Procedure, 1908 — Section 151, Order 41 Rule 27, Order 41 Rule 27(aa), Order 41 Rule 27(b)

Citation : (2022) 09 JH CK 0009

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Ashimi Kumar Sahani, Ajit Kumar, Vandana Singh

Final Decision : Dismissed

Judgement

Sujit Narayan Prasad, J

1. The instant writ petition is under Article 227 of the Constitution of India, wherein order dated 18.06.2012 passed in Title Appeal No. 11 of 2010 by the Principal District Judge, Bokaro is under challenge, whereby and whereunder, the petition filed under Order XLI, Rule 27 read with Section 151 of the CPC has been rejected seeking leave of the appellate court to adduce the certified copy of the Sale Deed No. 2610 dated 17.11.2006 as additional evidence for just decision of the question involved in the suit.

2. The fact leading to filing of the instant petition is that a declaratory suit has been filed being Title Suit No. 30 of 2001, which has been dismissed being not maintainable and holding the plaintiffs not entitled for any relief as prayed for.

3. The petitioners/plaintiffs filed an appeal against the judgment dated 30.10.2001 being Title Appeal No. 11 of 2010 and an application has also been filed before the appellate court under Order XLI, Rule 27 of the CPC seeking therein leave to allow the petitioners to adduce additional evidence by way of

insertion of Sale Deed No. 2610 dated 17.11.2006, which, according to the petitioners, is necessary for just decision of the lis.

The said petition has seriously been objected by the respondent/defendant by raising the issue that such application is not maintainable since there is no compliance of the statutory requirement as provided under the provision of Order XLI, Rule 27 of the CPC, i.e., the petitioner/plaintiff have not shown any due diligence as to what prevented them in not bringing the said document in course of trial as the said document is dated 17.11.2006 and the suit has been filed on 24.09.2001, as would appear from the pleading made at paragraph-5 thereof.

The appellate court rejected the aforesaid application vide order dated 18.06.2012 which is under challenge in the instant petition by invoking the jurisdiction conferred to this Court under Article 227 of the Constitution of India.

4. Mr. Ashim Kumar Sahani, learned counsel for the petitioners assisted by Mr. Ajit Kumar, learned counsel has submitted that the appellate court while rejecting the application filed under Order XLI, Rule 27 has not appreciated the legal position in right perspective since the very purpose and object of the provision as contained under Order XLI, Rule 27 of the CPC is to give a chance to the decree holder or the parties aggrieved with the judgment passed by the original court, i.e., the trial court to bring the document(s) which could not have been brought to the notice of the trial court

According to the petitioners, the Sale Deed No. 2610 of 17.11.2006 is the document which is required to be considered for the just and proper decision of the lis, but the same could not have been brought to the notice of the trial court.

5. The petitioners/plaintiffs after considering the aforesaid fact has, however, filed such application in exercise of power conferred under Order XLI, Rule 27 of the CPC seeking leave of the appellate court to allow the petitioners to adduce the additional evidence and the appellate court ought to have taken into consideration the very object and intent as contained under Order XLI, Rule 27 of the CPC in order for substantial justice but having not considered so, the order dated 18.06.2012 suffers from infirmity.

6. Mrs. Vandana Singh, learned counsel for the respondent has defended the order passed by the appellate court dated 18.06.2012(impugned) inter alia on the ground that there is no dispute about the fact that the provision as contained under Order XLI, Rule 27 of the CPC confers power upon the appellate court to consider the document by granting leave to the petitioners in order to bring importance document by way of additional evience for just and proper adjudication of the lis, but the aforesaid provision depends upon the fulfillment of certain conditions, i.e., the requirement under the statute is that the party seeking such leave is required to show due diligence before the appellate court as to what prevented the petitioners in not bringing the relevant document(s) at the stage of trial. But, having not done so, as would appear from the application filed under Order XLI, Rule 27 of the CPC, no such due diligence or reason has

been explained that why the aforesaid sale deed has not been brought to the notice of the trial court, it cannot be said that the order suffers from error.

According to the learned counsel, the appellate court after taking into consideration the aforesaid aspect of the matter is correct in rejecting the aforesaid application and hence, the same may not be interfered with in exercise of power conferred under Article 227 of the Constitution of India.

7. This Court has heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the appellate court in the impugned order dated 18.06.2012.

8. The fact which is not in dispute in this case is that the suit for declaration of right and title has been filed being Title Suit No. 30 of 2001. The said suit has been dismissed being not maintainable having no cause of action. The parties aggrieved with the aforesaid order challenged the same before the appellate authority by filing an appeal being Title Appeal No. 11 of 2010. Thereafter, an application under Order XLI, Rule 27 read with Section 151 of the CPC has been filed seeking leave of the appellate court to allow the petitioners to adduce documents, i.e., certified copy of the Sale Deed No. 2610 dated 17.11.2006 as additional evidence.

The appellate court rejected the said application holding therein that the requirement as stipulated under Order XLI, Rule 27 of the CPC has not been fulfilled since the petitioners have failed to show due diligence as to what prevented in not bringing the aforesaid document into notice of the trial court, which is the subject matter of the instant case.

9. This Court, before scrutinizing the legality and propriety of the impugned order, deems it fit and proper to discuss the scope of the High Court under the supervisory jurisdiction as conferred under Article 227 of the Constitution of India. The Hon'ble Apex Court in *Shalini Shyam Shetty Vrs. Rajendra Shankar Patil*, (2010) 8 SCC 329 has laid down regarding the scope of Article 227 which relates to the supervisory powers of the High Courts and by taking aid of the judgment rendered by the Hon'ble Full Bench of Calcutta High Court in *Dalmia Jain Airways Ltd. Vrs. Sukumar Mukherjee*, AIR 1951 Calcutta 193, wherein it has been laid down that Article 227 of the Constitution of India does not vest the High Court with limit less power which may be exercised at the court's discretion to remove the hardship of particular decisions. The power of superintendence confers power of a known and well recognized character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep the subordinate courts within the bounds of the authority, to see that they do what their duty requires and that they do it in a legal manner.

The power of superintendence is not to be exercised unless there has been;

(a) an unwarranted assumption of jurisdiction, not vested in a court or tribunal;

or

(b) gross abuse of jurisdiction; or

(c) an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals.

Further, in the aforesaid judgment the Hon'ble Apex Court has taken aid of a judgment rendered in *Mani Nariman Daruwala Vrs. Phiroz N. Bhatena*, (1991) 3 SCC 141 wherein it has been laid down that in exercise of jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to.

The Hon'ble Apex Court has made it clear that except to this limited extent the High court has no jurisdiction to interfere with the finding of facts.

Further, the judgment rendered by the Hon'ble Apex Court in *Laxmikant Revchand Bhojwani Vrs. Pratapsing Mohansingh Pardeshi*, (1995) 6 SCC 576 it has been laid down that the High Court under Article 227 cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.

It has been laid down at paragraph 47 of the aforesaid judgment that the jurisdiction under Article 227 is not original nor is it appellable. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different fields. Another distinction between these two jurisdictions is that under Article 226 the High Court normal annuls or quashes an order or proceedings but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made.

It has further been laid down regarding the powers to be exercised by the High Court under Article 227 of the Constitution of India. The High Court, in exercise of its jurisdiction of superintendence, can interfere in order only to keep the tribunals and courts subordinate to it within the bounds of its authority, in order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested with them and by not declining to exercise the jurisdiction which is vested in them. Apart from that, High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by

the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

10. It is evident, after discussing the scope as above, that the scope underlying under the provision of Article 227 of the Constitution of India is very limited and only to the extent that if there is any error on the face of order, the same can only be interfered with by the High Court in exercise revisional jurisdiction conferred under Article 227 of the Constitution of India.

11. This Court, after discussing the scope, further deems it fit and proper to refer the provision of Order XLI, Rule 27 of the CPCm which reads as under:

"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) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

12. Thus, it is evident that the provision of Order XLI, Rule 27 confers power upon the appellate court to grant leave to the appellant to adduce additional evidence on two conditions, i.e., (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. Admittedly, as would appear from the impugned order that is not the case of the petitioners since it is the admitted case of the petitioners that the document could not have been brought to the notice of the trial court, therefore, there is no occasion for the trial court to refuse to admit such evidence having not being produced.

The subsequent is contained under (aa) which provides that 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.

It is evident from the aforesaid provision that the party proceeding to produce additional evidence is required to establish that such evidence could not have

been brought to the notice of the trial court even in spite of the exercise of due diligence, such evidence was not within the knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

13. It is evident from the averment made in the petition filed under Order XLI, Rule 27, save and except, no pleading to the effect showing due reason as to why such document could not have been brought to the notice. Further, there is no averment to the effect showing the reason that such document was not within the knowledge or could not after the exercise of due diligence be produced by him at the time when the decree appealed against was passed. However, submission has been made at paragraph-11 of the aforesaid petition, appended as Annexure-2 to the paper-book to the effect that the original deed executed by Manju Devya wife of Dhurlal Mahato was misplaced and it could not be traced out in spite of best efforts and diligence hence, it could not be produced in lower court during the trial.

14. The requirement of law as provided under Order XLI, Rule 27 (aa) that party is required to make specific pleading that 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. Thus, there is no reason showing the due diligence, save and except, the averment to the effect that the said document was misplaced and it could not be traced out in spite of due diligence, the same cannot be said to be sufficient explanation for showing the exercise of due diligence.

15. This Court, after discussing the legal aspect as per the provision made under Order XLI, Rule 27 scrutinized the order passed by the appellate court wherefrom it is evident that the appellate court while discussing the provision of Order XLI, Rule 27 of the CPC with its requirement to be followed while filing application, has found that the petitioners since have not pleaded in the application showing the due diligence as required under Order XLI, Rule 27 (aa), therefore, the petition has been rejected.

16. This Court, after having considered the finding recorded by the appellate court while rejecting the aforesaid application, is of the considered view after taking into consideration the requirement to be fulfilled as provided under Order XLI, Rule 27 of the CPC, that the order cannot be said to suffer from error.

17. Since this Court has already discussed the scope of power conferred to this Court in exercising the revisional jurisdiction in exercise of power conferred under Article 227 of the Constitution of India which is very limited and the order impugned can only be interfered with if there is any error available on the face of order or suffers from jurisdictional error. This Court has not found any error on the face of order warranting interference in exercise of power conferred under the statute as it is not a case of jurisdictional error.

18. However, Mr. Sahani, learned counsel for the petitioners has submitted that

since the said document has already been brought on record by filing petition under Order XLI, Rule 27 of the CPC, as such, the appellate court may be directed to consider the same in the light of the provision as contained under Order XLI, Rule 27(b).

19. Reliance has been placed by Mr. Sahani, upon the judgment rendered by the Hon'ble Apex Court in Union of India vs. Ibrahim Uddin and Anr., (2012) 8 SCC 148, wherein the proposition has been laid down as under paragraph-49 that an application under Order XLI, Rule 27 of the 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. Therefore, submission has been made that the appellate court may be directed to consider the aforesaid document at the time of hearing of appeal on merits as per the observations made at paragraph-49 of the aforesaid judgment.

20. Mrs. Vandana Singh, learned counsel for the respondent has submitted upon the same judgment at paragraph-39 of the judgment, wherein it has been observed that the insertion of the document by way of additional evidence is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.

21. This Court has considered the rival submissions advanced on behalf of the parties as also taken into consideration the stipulation made at paragraph-39 of the aforesaid judgment as also paragraph-49 thereof.

22. It would be evident from the perusal of paragraph-49 of the judgment wherein it has been laid down that the true test as to 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. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. The said paragraph reads as under:

"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. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court.”

23. The reference of paragraph-39 is also required to be made upon which the learned counsel for the respondent has relied upon, wherein it has been observed that a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. The said paragraph reads as under:

“39. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal.”

24. This Court, after going through the observations made at paragraph-39 as also paragraph-49, is of the view that the Hon'ble Apex Court while dealing with the provision of Order XLI Rule 27 of the CPC has laid down a test said to be “true test” to be adjudged by the appellate court as to whether the appellate court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. Therefore, this Court is of the view that it would not be appropriate to pass order as per the submission made on behalf of the learned counsel for the petitioner by directing the appellate court to consider the said document in the light of the provision of Order XLI Rule 27 rather leaving it open upon the appellate court to consider the said document in view of the observation at paragraph-49 of the judgment in *Union of India vs. Ibrahim Uddin and Anr.* (supra).

25. Accordingly, the instant writ petition stands dismissed, however, with the observations and directions as above.

26. In consequence of the disposal of the instant petition, interim order dated 01st May, 2013 stands vacated.