

(2017) 12 OHC CK 0009

In the Orissa High Court

Case No : 221 of 1988

Khirod Chandra Mahanta

APPELLANT

Vs

Atul Kumar Giri and others

RESPONDENT

Date of Decision : 11-12-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 27](#)

Citation : (2017) 12 OHC CK 0009

Hon'ble Judges : A.K.Rath

Bench : SINGLE BENCH

Advocate : D.P. Mohanty

Judgement

1. This is a plaintiff's appeal against reversing judgment.

2. Since the appeal is disposed of on a short point, the facts may not be recounted in detail. Suffice it say that the plaintiffappellant instituted the suit for declaration of right, title, interest and the sale deed dated 15.02.1982 executed by defendant no.5 in favour of defendant nos.1 to 4 as illegal. Defendants entered contest and filed a written statement denying the assertions made in the plaint. The suit was decreed. Defendant nos.1 to 4 filed T.A. No. 07 of 1985 before the court of learned District Judge, Keonjhar. In course of hearing of the appeal, the defendant nos.1 to 4-appellants filed a petition under Order 41 Rule 27 CPC to admit certain documents, i.e., Khatian and incumbrance certificate as additional evidence. The learned appellate court came to hold that admission of two documents as additional evidence would enable the court for proper adjudication of the matter. Held so, it admitted the documents as additional evidence and allowed the appeal.

3. The appeal was admitted on the following substantial question of law:-
"Whether the appellate court while admitting additional evidence is required to give an opportunity to the opposite party to adduce rebuttal evidence to contest the claim when such document was not filed in the trial court ?"

4. Heard Mr. D.P. Mohanty, learned advocate on behalf of Mr. B.H. Mohanty, learned Senior Advocate for the appellant. None appears for the respondents.

5. Mr. Mohanty, learned advocate for the appellant submits that once the learned appellate court comes to a conclusion that it requires any document to enable it pronounce the judgment, an opportunity should be provided to the other side. The learned appellate court admitted the documents as additional evidence without providing opportunity to the respondents. In view of the same, the judgment is vitiated. He relies on a decision of the apex Court in the case of *The Land Acquisition Officer, City Improvement Trust Board, Bangalore vs. H. Narayanaiah*, AIR 1976 SC 2403 .

6. Clause (b) of the Order 41 Rule 27 CPC provides that if 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 Court may allow such evidence or document to be produced, or witness to be examined.

7. In the *Land Acquisition Officer (supra)*, the High Court allowed the application filed under Order 41, Rule 27 CPC without assigning any reason. The apex Court held that the High Court had not complied with the provisions of Order 41, Rule 27 CPC which requires that an appellate court should be satisfied that the additional evidence is required to enable it either to pronounce judgment or for any other substantial cause. High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence. The judgment of the apex Court applies with full force to the facts of this case.

8. Resultantly, the judgment and decree of the appellate court are set aside. The matter is remitted back to the learned appellate court for de novo hearing after giving opportunity to the respondents to adduce rebuttal evidence on the application filed by the appellant under Order 41, Rule 27 CPC. In order to avoid further delay, the appellant shall appear before the learned District Judge, Keonjhar on 8th January, 2018, on which date, the learned appellate court shall issue notice to the respondents and conclude the hearing of the appeal within a period of three months.