
(2010) 12 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 2230 of 2010

Kiran Kumari (Mrs.) and Others

APPELLANT

Vs

Hanumant Singh and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

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

Citation : (2011) 2 CivCC 535 : (2011) 2 RLW 1274 : (2011) 1 RLW 878

Hon'ble Judges : Mahesh Bhagwati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahesh Bhagwati, J.—Challenge in this appeal is to the order dated 30th August, 2010, whereby the learned Additional District Judge No. 2, Jaipur District, Jaipur allowed the appeal and set-aside the judgment and decree dated 1st September, 1990, while passing an order on four applications filed under Order 41 Rule 27 of Code of Civil Procedure.

2. Heard the learned Counsel for the Appellants and carefully scanned the relevant material on record including the impugned order.

3. The only crucial question springing for consideration in the instant appeal is as to whether the learned appellate Court has power to set-aside the judgment and decree passed by the learned trial Court while passing an order on an application under Order 41 Rule 27 of Code of Civil Procedure?

4. Learned Counsel for the Appellants canvassed that the learned appellate court had power to allow the application and take the additional evidence or document on record under Order 41 Rule 27 of Code of Civil Procedure, but was not empowered to set-aside the judgment and decree passed by the learned trial Court. Thus the impugned order is contrary to the express provisions of Order 41 Rule 27 of CPC and the judgment and decree of the lower Court could not be set-aside. He has cited a judgment of this High Court rendered in the case of Amar

Chand v. Bhanwar Lal RLW 1994 (1) 285.

5. It is relevant to reproduce the operative part of the impugned order dated 30.8.2010 passed by the learned appellate Court, which reads thus:

vr% vihykFkhZ dh vksj ls izLrqr vihy Lohdkj dh tkrh gS ,oa vf/kuLFk U;k;ky; }kjk ikfjr fu.kZ; fnukad 1-9-1990 dks vikLr fd;k tkrk gS ,oa oknh vihykFkhZ dh vksj ls is" k fd;s x;s pkjksa izkFkZuk i= varxZr vkns" k 41 fu;e 27 lhihlh ikap gtkj #i;s gtsZ ij Lohdkj fd;s tkrs gS rFkk nLrkostkr dks fjdkMZ ij fy;s tkus dk vkns" k fn;k tkrk gS vkSj ftu nLrkostkr dsk fjdkMZ ij fy;s tkus ds vkns" k fd;s x;s gS os ewy vf/kuLFk U;k;ky; dh i=koyh ds lkFk fHktok;s tkos vkSj QksVks izfr bl U;k;y; dh i=koyh es j[kh tkos A

izdj.k iqu % fuLrkj.k gsrq fjek.M fd;k tkdj vf/kuLFk U;k;ky; dsk funsZ" k fn;s tkrs gS fd bu nLrkostkr ds laca/k esa i{kdkjksa dh lk{; ysdj iqu% fu.kZ; ikfjr djsa A

i{kdkjksa dks ikcUn fd;k tkrk gS fd os fnukad 23-9-2010 dks vf/kuLFk U;k;ky; esa mifLFkr gks A

vkns" k dh izfr ds lkFk vf/khuLFk U;k;ky; dh i=koyh vfoyEc ykSVkbZ tkosa A

6. In the case of (supra), this Court has observed as under:

It is thus clear that an appellate Court has no jurisdiction to set aside the judgment & decree of a trial Court while passing order under Order 41 Rule 27, Code of Civil Procedure. The appellate Court could direct the trial Court to record the statement of the Commissioner or itself record his statement. The lower appellate Court adopted very easy course for deciding the appeal without caring in the least the express provisions of law and the convenience of the parties. It is being noticed that Shri M.L. Nogia is deciding civil appeals in this manner to achieve required disposal of case. He should immediately stop this. Accordingly, the appeal is allowed. The order of the learned Additional District Judge, Sojat dated 20th May, 1993 is set-aside. He will himself examine the Commissioner in the presence of the parties and therefore, will decide the appeal in accordance with law.

7. Adverting to the facts of the instant case, it is noticed that the learned appellate Court albeit allowed four applications while passing the orders under Order 41 Rule 27 Code of Civil Procedure, but set-aside the judgment and decree dated 1st September, 1990 passed by the learned trial Court also. In view of the express provisions of Order 41 Rule 27 and 28 of Code of Civil Procedure, the learned appellate Court is empowered to allow additional evidence or document to be produced, but is not empowered to set-aside the judgment and decree passed by the trial Court.

8. Rule 28 of Order 47 CPC envisages the mode of taking additional evidence. The Rule reads thus:

Wherever additional evidence is allowed to be produced, the appellate court may either take such evidence or direct the Court from whose decree the appeal is

preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court.

9. Thus, it is candidly clear that the learned appellate Court is not empowered to set-aside the judgment and decree of the lower Court while passing an order under the express provisions of Order 41 Rule 27 Code of Civil Procedure. Unequivocally and undeniably, the impugned order is found to be contrary to law in the light of the judgment of *Amar Chand v. Bhanwar Lal* (supra), which deserves to be set-aside.

10. For the afore-stated reasons, the appeal is allowed and the impugned order dated 30th August, 2010 stands set-aside and the case is remitted to the learned appellate Court to pass an order, after affording an opportunity of being heard to both the parties, afresh in the light of the relevant provisions of law.