

(2015) 11 AP CK 0013

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos. 933, 1195 and 2620 of 2015

Medidhi Chakra Veni

APPELLANT

Vs

Kamisetti Venkata Ramanam and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 107, 107(d), 115

Citation : (2016) 2 ALD 155 : (2016) 1 ALT 677

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Mangena Sree Rama Rao, for the Appellant; Pushyam Kiran, for the Respondent

Final Decision : Allowed

Judgement

A. Ramalingeswara Rao, J.—The 7th respondent in A.S. No. 196 of 2007 on the file of VI Additional District Judge, Fast Track Court, East Godavari at Rajahmundry is the revision petitioner in these three revision cases. The predecessor-in-interest of 7th respondent, who was arrayed as 1st respondent in the appeal, was the original plaintiff. She filed O.S. No. 525 of 2004 on the file of Principal Senior Civil Judge, Rajahmundry for partition of plaintiff schedule property into three equal shares and for allotment of 1/9th share to her. The said suit was decreed on 10-10-2007 and against the said judgment and decree, the defendants 2 to 6, 12 and 13 preferred A.S. No. 196 of 2007. They filed three applications, I.A. No. 806 of 2010, I.A. No. 167 of 2010 and I.A. No. 968 of 2009, to receive death certificate of one Kamisetty Bapanamma, to receive certified copy of judgment in O.S. No. 615 of 2002 on the file of I Additional Junior Civil Judge, Rajahmundry and to receive registration extract of sale deed executed by Kamisetty Bapanamma respectively. When the said applications were allowed on 1-11-2010, the revision petitioner herein who is the successor of the plaintiff filed the above civil revision petitions challenging the said orders.

2. So far as the death certificate is concerned, Smt. Kamisetty Bapanamma died

on 12-05-1954, but the registration was done on 01-07-2010, subsequent to the delivery of judgment in O.S. No. 525 of 2004 dated 10-10-2007. But for the subsequent registration of death, the said document could have been made available during the trial of the suit itself, if registration extract was obtained at that time. The documents mentioned in the other two applications are also anterior to the date of the suit.

3. The affidavits filed in support of the applications state that the applications were filed for reception of the documents which are necessary for adjudication of the appeal. The applications were contested seriously by filing a detailed counter by the original plaintiff. The trial Court allowed the applications on the ground that the documents are not disputed documents and their relevancy would be considered at the time of hearing of the main appeal and they could be allowed accordingly. The relevant portion of the order in respective I.A.s reads as follows:

I.A. No. 806 of 2010:

On clear perusal of the petition, it is the Death Certificate of Kamisetti Bapanamma/Date of death is 12-05-1954 issued by the Gram Panchayat, Diwancheruvu. On clear perusal of the petition averments the document is received.

I.A. No. 167 of 2010:

The petitioner counsel submitted that due to the oversight it was not placed before the Court. On clear perusal of the petition averments the decree of I Additional Junior Civil Judge Court, Rajahmundry it is not a disputed document. Hence, it is received only for consideration and relevancy at the time of hearing of main appeal.

I.A. No. 968 of 2009:

As per the judgment in O.S. No. 615 of 2002 the sale deed was marked as Ex.A.2. Hence, there is knowledge of the party. But due to the mistake death certificate was not filed. Considering the latches on the part of the petitioners the document is an important document regarding to the death of the person and other issues it has to be helpful to the Court and parties to determine the issue. Hence, this petition is allowed and document is received.

4. Learned counsel for the petitioner submitted that these documents were available at the time of trial of the suit and the petitioners therein have not explained proper reasons for receiving them at a belated stage during pendency of the appeal. Though the appeal was filed in the year 2007, the documents were filed after two years without assigning proper reasons. The learned counsel for the respondents submitted that there were latches on the part of the petitioner also. Though the petitioner came on record in the place of original plaintiff in the year 2012 itself, she did not challenge the proceedings of the lower Appellate Court allowing the applications on 1-11-2010 till 2015 in the revision petitions.

5. Thus, there appears to be latches on both sides. But, in the present cases, we are concerned with the manner of disposal of the applications filed by the appellants in A.S. No. 196 of 2007 by the lower Appellate Court when there was a serious opposition from the respondents in the appeal.

6. Order XLI Rule 27 of the Code of Civil Procedure reads as follows:

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.

7. What the lower Appellate Court should have seen is whether the appellants were diligent in prosecuting their case or making an attempt to cover up the latches in their case. Without going into such relevant aspect of the matter, the lower Appellate Court passed the above orders. The learned counsel for the respondents/appellants relied on *Mahavir Singh and Others Vs. Naresh Chandra and Another*, *Parsotim Thakur and Others vs. Lal Mohar Thakur and Others* AIR 1931 143 (Privy Council) and *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D)* by Lrs., . The decisions cited by the learned counsel for the respondents do not help their case.

8. In *K. Venkataramaiah v. A. Seetharama Reddy and others* (supra), the Supreme Court considered the case of receiving evidence in an election petition by the High Court when additional evidence was sought to be produced before the Court. A Constitution Bench of the Supreme Court held that the Court has to allow the additional evidence on the examination of the evidence that is available before it. The Court observed with approval that the distinction pointed out by the Privy Council in *Parsotim Thakur and Others vs. Lal Mohar Thakur and Others* AIR 1931 143 (Privy Council) that the legitimate occasion for the exercise of discretion to receive additional evidence is not whenever before the appeal is heard a party applies to adduce fresh evidence, but when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.

9. In *Mahavir Singh and others v. Naresh Chandra and another* (supra), it was held that the power to admit additional evidence can be exercised only when the appellate court requires additional evidence for substantial cause. The relevant observations of the Supreme Court read as follows:

Before we proceed further we would like to refer to the scope of an application under Order XLI, Rule 27 CPC. Section 107 CPC enables an appellate court to take additional evidence or to require such other evidence to be taken subject to such conditions and limitations as are prescribed under Order XLI, Rule 27 CPC. Principle to be observed ordinarily is that the appellate court should not travel outside the record of the lower court and cannot take evidence on appeal. However, Section 107(d) CPC is an exception to the general rule, and additional evidence can be taken only when the conditions and limitations laid down in the said rule are found to exist. The court is not bound under the circumstances mentioned under the rule to permit additional evidence and the parties are not entitled, as of right, to the admission of such evidence and the matter is entirely in the discretion of the court, which is, of course, to be exercised judiciously and sparingly. The scope of Order XLI, Rule 27 CPC was examined by the Privy Council in *Parsotim Thakur and Others vs. Lal Mohar Thakur and Others* AIR 1931 143 (Privy Council), in which it was laid down clearly that this rule alone can be looked to for taking additional evidence and that the court has no jurisdiction to admit such evidence in cases where this rule does not apply. Order XLI, Rule 27 CPC envisages certain circumstances when additional evidence can be adduced:

- (i) the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (ii) 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
- (iii) 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.

In the present case, it is not the case of either party that the first situation is attracted. So far as the second circumstance noticed above is concerned, question of exercise of due diligence would not arise because the concerned scientific laboratory from which examination is sought to be made itself was not in existence at the time of trial and so that clause is also not attracted. In the third circumstance the appellate court may require any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. The expression to enable it to pronounce judgment has been subject of several decisions including *Parsotim Thakur and Others vs. Lal Mohar Thakur and Others* AIR 1931 143 (Privy Council) wherein it was held that when the appellate court finds itself unable to pronounce judgment owing to a

lacuna or defect in the evidence as it stands, it may admit additional evidence. The ability to pronounce a judgment is to be understood as the ability to pronounce a judgment satisfactory to the mind of court delivering it. It is only a lacuna in the evidence that will empower the court to admit additional evidence [See: Parsotim Thakur and Others vs. Lal Mohar Thakur and Others AIR 1931 143 (Privy Council)]. But a mere difficulty in coming to a decision is not sufficient for admission of evidence under this rule. The words or for any other substantial cause must be read with the word requires, which is set out at the commencement of the provision, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council in Kesowji Issur v. G.I.P. Railway [supra]. It is under these circumstances such a power could be exercised. Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 CPC, could have interfered with such an order, particularly when the whole appeal is not before the court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order XLI, Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC. In this regard, we may notice the decision of this Court in Parsotim Thakur and Others vs. Lal Mohar Thakur and Others AIR 1931 143 (Privy Council) , in which the scope of exercise of power under Section 115 CPC on an order passed in an application filed under Order XLI, Rule 27 CPC was considered. When this decision was cited before the High Court, the same was brushed aside by stating that the principle stated therein is not applicable to the facts of this case. We do not think so. The High Court ought not to have interfered with such an order.

10. In North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by Lrs. (supra), after considering the entire case law, it was held that additional evidence can be admitted when 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 and it has to be considered at the time of hearing of the appeal on merits. The relevant observation reads as follows:

It is plain that under clause (b) of sub-rule (1) of Rule 27 Order 41 C.P.C., with which we are concerned in the instant case, evidence may be admitted by an appellate authority if it "requires" to enable it to pronounce judgment "or for any other substantial cause". The scope of the rule, in particular of clause (b) was examined way back in 1931 by the Privy Council in Parsotim Thakur and Others vs. Lal Mohar Thakur and Others AIR 1931 143 (Privy Council) . While observing that the provisions of Section 107 as elucidated by Order 41 Rule 27 are clearly not intended to allow litigant, who has been unsuccessful in the lower court, to

patch up the weak parts of his case and fill up omissions in the court of appeal, it was observed as follows:

"Under Cl. (1)(b) it is only where the appellate Court "requires" it, (i.e., finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but "when on examining the evidence as it stands some inherent lacuna or defect becomes apparent."

14. Again in *Parsotim Thakur and Others vs. Lal Mohar Thakur and Others* AIR 1931 143 (Privy Council) a Constitution Bench of this Court while reiterating the afore-noted observations in *Parsotim's* case (*supra*), pointed out that the appellate court has the power to allow additional evidence not only if it requires such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Thus, the question whether looking into the documents, sought to be filed as additional evidence, would be necessary to pronounce judgment in a more satisfactory manner, has to be considered by the Court at the time of hearing of the appeal on merits.

In the case before the lower appellate court, the applications were allowed even before considering the evidence before it and coming to the conclusion that the additional evidence is required for pronouncing judgement in a more satisfactory manner. Hence the orders are not in accordance with law.

11. In the result, the orders dated 01-11-2010 in I.A. No. 806 of 2010, I.A. No. 167 of 2010 and I.A. No. 968 of 2009 in A.S. No. 196 of 2007 passed by the VI Additional District Judge-cum-Fast Track Court, East Godavari District, Rajahmundry allowing the applications for the reasons aforesaid are set aside and the applications are posted along with the appeals for consideration of the applications along with the appeals and taking the additional evidence, if necessary at the time of disposal of the appeal on the basis of available evidence when it feels that the additional evidence is necessary.

12. The Civil Revision Petitions are allowed accordingly.