

(1935) 09 AHC CK 0025
In the Allahabad High Court

Mt. Ruwaiya Khatun and Others

APPELLANT

Vs

Mt. Maqbul Fatma and Others

RESPONDENT

Date of Decision : 13-09-1935

Acts Referred:

Citation : AIR 1936 All 217

Final Decision : Dismissed

Judgement

1. This is a Letters Patent Appeal under the following circumstances. There was a suit brought by the plaintiffs in the Court of the City Munsif of Bareilly for possession of a certain house, and the learned Munsif decreed that suit. An appeal was filed in the Court of the District Judge and the learned District Judge passed an order of remand stating that the judgment was not very clear; that there was a difficulty about boundaries, that the point for decision is whether in the litigation of 1904 Mansur Husain referred only to the unshaded portion as belonging to Maqbul Fatima, etc., and then proceeded to state:

The lower Court is to decide whether the defendants (a woman with minor children) are allowed to file papers discovered in the almirah of Mansur Hussain who died in 1920. File to be returned within six weeks. If the defendants are allowed to produce further evidence, the same permission to be given to the plaintiffs. (Sd.) P.C. Plowden, April 1, 1931.

2. The learned Subordinate Judge to whom the remand had come asked the learned District Judge what question he wanted to be decided, and he was informed that he should decide the question in regard to the merits of the case, and accordingly he proceeded to come to a finding on 2nd May 1931. The appeal was then argued before the learned District Judge and he upheld that finding of fact and dismissed the suit of the plaintiffs. A second appeal was then brought in this Court and a learned Single Judge held that according to the decision of their Lordships of the Privy Council in *Parsotam Thakur v. Lal Mohar* 1931 ALJ 513 the admission of new evidence by the lower appellate Court was illegal on a proper construction of Order 41, Rule 27. Their Lordships in that decision had laid down

that this rule was not intended to allow a litigant who had been unsuccessful in the lower Court to patch up the weak parts of his case and fill up omission in a Court below. Under Rule 27(1)(b) it is only where the appellate Court finds it needful that additional evidence can be admitted. In other words in the rule, as it then stood, the words for any other substantial cause" in Sub-rule (b) must be governed by the words "the appellate Court requires." The learned single Judge therefore remanded the case in the following terms:

The case is sent back to the lower appellate Court for re-hearing of the appeal after excluding the new evidence produced by the party.

3. Now with that order we are in agreement and the ruling of their Lordships of the Privy Council undoubtedly governed the case at the time at which the learned single Judge made his order of remand. The law has however since been altered by an alteration made by this Court in Section 27 by the introduction of a new Sub-rule 1(b) as follows:

(b) The evidence sought to be adduced by a party to the appeal which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made may be allowed to be produced.

4. This sub-rule now lays down that the question of admission of new evidence does not depend on the requirements of the appellate Court and that a party has a right if he satisfies the Court that he exercised due diligence and the new evidence was not within his knowledge or could not be produced by him at the time when the decree or order under appeal was passed or made. We therefore direct the attention of the learned District Judge to the change in the law which has been made by this rule and it will be open to the defendants to make an application to the District Judge under the amended Rule 27, Order 41, as it now stands when this case is remanded to him for re-hearing. We dismiss this Letters Patent Appeal with these remarks. Costs of this Letters Patent Appeal will abide the result.