
(1996) 04 OHC CK 0002

In the Orissa High Court

Case No : Civil Revision No. 294 of 1994

Mukha Nayak and Others

APPELLANT

Vs

Umakanta Sahu and Others

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

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

Citation : (1996) 82 CLT 299 : (1996) 1 OLR 505

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : A.K. Mohapatra, A.K. Misra, B.P. Satpathy, A. Tripathy and R.K. Mohanty, for the Appellant; B. Pal and D.N. Lenka for opp. parties 1 to 5, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.—Rejection of application filed under Order 41, Rule 27 of the Code of Civil Procedure (in short "the Code") for adducing additional evidence by the appellate Court is the grievance of the petitioners in the present civil revision.

2. The opposite parties as plaintiffs instituted Original Suit No. 32/82 (I) before the learned Subordinate Judge, Bhadrak, presently designated as Civil Judge (Senior Division) for a declaration that registered sale deed dated 18-5-1932 is void, for permanent injunction and alternatively for passing a decree for partition. The trial Court decreed the suit by declaring the registered sale deed as void and also passed the decree permanently injunctioning the present petitioners. Against the aforesaid judgment and decree, the petitioners preferred Title Appeal No. 69/89 before the learned Additional District Judge, Bhadrak. During the pendency of the appeal, the appellants therein filed two applications, one for amendment of written statement and another for adducing oral evidence. The learned appellate Judge rejected the application for amendment holding that the amendment in effect introduced a new case and therefore, the same was impermissible. The application for adducing additional evidence has been

rejected by the appellate Court on the ground that the provisions enumerated under Order 41, Rule 27 of the Code do not permit a party to patch up and fill up the omissions before the Court of appeal. It has been further opined that the Court is in a position to pronounce the judgment on the basis of the material before it without taking into consideration the additional evidence sought to be adduced. It is pertinent to state here that prayer was to bring in a gift deed by way of additional evidence.

3. Refusal of the prayer to amend the written statement is not called in question in this revision. The present revision is confined to the grievance of non-entertainment of the application filed for adducing additional evidence.

4. The learned counsel for the petitioner submits that the approach of the appellate Court is not in accordance with the mandate of Order 41, Rule 27 of the Code. It is his submission that the finding of the learned appellate Judge is absolutely cryptic and the matter has not been looked into from the proper perspective. The learned counsel for the opposite parties contends that there is nothing illegality in the order inasmuch as there is no justification to allow the application for adducing additional evidence while the same is not supported by pleadings. It is contended that the appellate Court having rejected the application for amendment of the written statement and the said order having been conceded to, the order of rejection of the prayer under Order 41, Rule 27 of the Code does not suffer from any informity.

5. It is clear as day that the impugned order is a cryptic one. The observations of the learned appellate Judge are reproduced below :

"...Rule 27 of Order 41 of Civil Procedure, Code does not allow a party to patch up the parts of his case and to fill up the omission in the Court of appeal. In my opinion this Court can pronounce the judgment on the materials before it without taking into consideration of the additional evidence sought to be adduced. Hence the petition filed under Order 41, Rule 27 has got no merit and it stands rejected."

From the aforesid order, it is crystal clear that the Court below has not kept in view the essential and relevant aspects which are to be taken into consideration while dealing with an application for adducing additional evidence. This Court in the case of Mrutunjoy Lenka and Ors. v. Gagan Kishore Swain (dead) and after him his L. Rs. and Ors. reported in 1994 (I) OLR 515, succinctly stated the principles as follows :

"2. For the purpose of considering whether additional evidence is to be entertained by the appellate Court, first it is to be examined whether the evidence sought to be adduced are relevant and admissible. If admissibility of document would require proof through oral evidence. Court is to consider whether such opportunity is to be given. This would depend upon three circumstances as indicated in Order 41, Rule 27, CPC. Where a party was not in possession of the additional evidence at the time of trial, he can be given

opportunity to bring in the same to record and for the purpose of bringing them to record, Court is to assist that party. Where despite the evidence being produced Court refused to entertain the same, appellate Court can give opportunity to the party for bringing the materials to record in accordance with law. The third ground is a discretion of the Court. Where appellate Court feels that for proper adjudication of the suit the materials ought to be entertained, it can also entertain the same although the first two grounds are not satisfied. Therefore, it is always desirable to consider the application for additional evidence along with the merits of appeal so that Court can consider whether on the facts and in the circumstances of the case the additional evidence would be enter-tainable."

In another decision rendered in Bishnu Charan Sahu Vs. Paramananda Sahu and Others, , a Division Bench of this Court held thus :.

" As to when either party to an appeal is entitled to produce additional evidence, the relevant provision is Order 41, Rule 27 of the Code. Under Clause 1 (b) of the said rule the appellate Court has 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". An appellate Court may be able to pronounce judgment on the materials already on record but may still consider additional evidence necessary in the interest of justice to pronounce a satisfactory judgment. In such a case paramount consideration being ends of justice admission of additional evidence is for meeting a "substantial cause". Further more if additional evidence sought to be introduced in appeal has a direct bearing on the main issue involved in the case, a party should normally be permitted to adduce additional evidence unless he is guilty of laches....."

6. The principles laid down by the aforesaid decisions of this Court clearly enunciate that the materials on record to pronounce the judgment is not the only criterion for entertaining an application for adducing additional evidence. The other aspects are also similarly important. In the case at hand, the Court below has observed that there were materials on record to pronounce the judgment and therefore there was no necessity to entertain the application. These observations are not correct in view of the settled position of law In this connection, reference may be made to the decision rendered in K. Venkataramiah v. Seetharama Reddy, reported in AIR 1963 SC 1525 wherein, their Lordships held as follows :

"Under Rule 27 (1), 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 on the state of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce the 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. Such a case will be owe for allowing additional evidence for any other substantial

cause under Rule 27 (1) (b) of the Code."

7. The learned appellate Judge while rejecting the petition has observed in a sweeping manner that the provisions enumerated under Order 41, Rule 27 do not allow a party to fill up omissions in the Court of appeal. This is an erroneous conception which has influenced the appellate Court to arrive at such a conclusion. True it is, additional evidence cannot be led to pronounce a judgment in a particular way but definitely fresh evidence is permissible to pronounce a judgment in a satisfactory manner and for that purpose filling up the lacuna is permissible. In this connection one may profitably refer to the decision rendered in the case of the Municipal Corporation of Greater Bombay v. Lala Pancham and Ors., reported in AIR 1965 SC 1003 wherein the apex Court held as follows :

" This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence,

(Quoted from the placitum)

Scrutinised by the above canons the observation of the appellate Court is inappropriate and unjustified.

8. From the aforesaid analysis it is perceptible that the real test is pronouncement of judgment in a more satisfactory manner keeping in view the interest of justice. The concept of substantial cause has to be given due weightage. Needless to say, the application has to satisfy the ingredients as laid down in the said provision. Judged in the light of the aforesaid principles, the impugned order does not stand the test. There has been no discussion whatsoever with regard to the concept of substantial cause. A cryptic order has been passed without stating the reasons for arriving at the conclusions therein. The irresistible conclusion is that the impugned order is liable to be set aside and I accordingly do so. The appellate Court is directed to consider the matter afresh keeping in view the law governing the field. It is desirable that he considers the application at the time of hearing of the appeal.

9. The Civil Revision is accordingly allowed. There shall be no order as to costs.