

(2017) 09 MP CK 0003
In the Madhya Pradesh High Court
Case No : 157 of 2006

Pradeep Singh Ranawat S/o Late Shri Devi Singh RAnawat	APPELLANT
Vs	
Smt. Rekha Bai Solanki, & Ors.	RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 43 Rule 1\(u\)](#), [Order 41 Rule 27\(1\)\(b\)](#)

Citation : (2017) 09 MP CK 0003

Hon'ble Judges : Sujoy Paul

Bench : Single Bench

Advocate : Pranay Verma

Final Decision : Allowed

Judgement

1. This miscellaneous appeal filed under Order 43 Rule 1(u) of CPC is directed against the judgment and decree dated 21.11.2005, passed in Civil Appeal No.12-A/2005, whereby the Court below has remitted the matter back before the trial Court by directing that the trial Court shall permit the parties to file relevant documents, lead evidence and then decide the matter on merits. The appellants are aggrieved by this order and contended that the plaintiffs/respondents filed a suit for declaration. In the main relief, the plaintiffs prayed for declaration that they should be declared title holder of lands described in para 2(a), 2(b) & 2(c) of the plaint. In alternatively, it is prayed that if trial Court comes to the conclusion that defendants No. 1 & 2 are also entitled for the lands from the aforesaid described pieces of land, then from the lands described at No.136 (Rakba No.6464 acres) may be added in the aforesaid lands and plaintiffs may be declared owners of these lands.

2. The trial Court after completion of pleadings, framed issues and permitted the parties to lead their evidence. By judgment and decree dated 23.12.2004, the suit was dismissed. Aggrieved by the said judgment and decree, the plaintiffs

filed Civil Appeal No.12-A/2005. Mr. Verma, learned counsel for the appellants drew the attention of this Court on para 10 of the judgment dated 21.11.2005, wherein the Court below has framed a question, whether the trial Court had committed any error in not treating the property in question as HUF property of plaintiffs and defendants. Mr. Verma, by taking this Court to the judgment submits that interestingly, this question has not been answered by the Court below. The Court below from para 10 to para 19 merely discussed about the material on record, stand of the parties, etc. but did not give any finding about the aforesaid question framed.

3. Learned counsel for the appellants submits that in para 20 of the impugned judgment, the Court framed another issue, whether land described as No.136 is a HUF property or it is a self-earned property? The appellant submits that the Court below has given a finding that said land was purchased on 26.06.2016 and on that date Sankata Prasad was a minor because his date of birth is recorded as 15.03.1953 in Ex.P/7. Hence, the property in question was purchased by his father-Narayan Prasad. The Court below opined that when property is purchased by Narayan Prasad, it must be ensured that whether Narayan Prasad had sufficient agricultural land and other source of income to purchase the said land. In para 23, the Court below opined that there is inadequate oral and documentary evidence in relation to aforesaid aspect. It is not clear whether the land No.136 was purchased from the income of HUF family by the father of Sankata Prasad, namely, Narayan Prasad. Considering the aforesaid, the Court below opined that in relation to land No.136, the revenue record, khasra pansala, rin pustika have not be filed. Thus, in purported exercise of Order 41 Rule 27 (1) (b) of CPC, the Court below remitted back the matter before the trial

Court to permit the parties to file documents afresh and lead evidence. Thereafter the Court was directed to decide the matter afresh.

4. Mr. Verma, submits that the learned lower appellate Court has committed an error in not deciding the main prayer of the plaintiffs despite framing of question in para 10 of the judgment and without deciding the main prayer, the question of deciding alternative prayer does not arise. The plaintiffs did not produce any additional evidence before the appellate Court in the appeal. The Court below has erroneously invoked Order 41 Rule 27 (b). The said provision is not attracted in the present case. Reliance is placed on order passed by this Court in M.A. No.479/2011 [Vipin Kumar & others vs. Smt. Sarojani]. He also relied on certain judgments of other High Courts reported in AIR 1953 Madras 955, [G. Ramachandra Gupta and another vs. Pandurangam Chetty and other], AIR 1961 AP 226, [Vadia Veerabhadrapa vs. Challa Venkatappa], AIR 1966 Patna 142, [Kirti Bhusan Singh vs. Dipti Bikash Bahaduri & others], AIR 1965 SC 1008, [The Municipal Corporation of Greater Bombay vs. lala Pancham & others], AIR 2008 SC 579, [K.R. Mohan Reddy vs. M/s. Net Work Inc .] and AIR 1954 Madras 190, [Muddamma Malla Reddi & others vs. State].

5. No other point has been pressed by the learned counsel for the appellants.

6. Nobody appeared for the respondents even in the passover round.

7. I have heard Mr. Verma, learned counsel for the appellants at length and perused the record.

8. The relevant portion of Order 41 Rule 27 of CPC reads as under:

"27. 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)..... (aa)..... (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."

9. A plain reading of the aforesaid provision makes it clear that the said enabling provision can be used when any document is required to be produced to enable the Court to pronounce its judgment. The lower appellate Court has not given any finding that the said documents, namely, revenue records, khasra pansala and rin pustika is necessary for delivering the judgment. The relevant sale deed is already on record. Thus, the question is whether the Court below was justified in remitting the matter back by taking recourse of Order 41 Rule 27(1)(b). This point is no more res integra.

10. In Parsotim Thakur Vs. Lal Mohar Thakur reported in AIR 1931 PC-131, the court opined that under Rule 27 clause (1)(b), it is only where the appellate court "requires" it (i.e finds it needful).... The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applied to adduce fresh evidence, but "when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent". The Privy Council further held, It may well be that the defect may be pointed out by a party, or that a party may move the court to supply the defect, but the requirement must be the requirement of the court upon its appreciation of evidence as it stands. The court while exercising this power is obliged to record its reasons for doing so. It is further held that such power should be exercised sparingly.

11. In Union of India Vs. Ibrahim Uddin and another reported in (2012) 8 SCC 148, the Apex Court followed the said principle and held that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore, is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court.

12. In *P. Purushottam Reddy and another Vs. Pratap Steels Ltd.* reported in (2002) 2 SCC 686, it was emphasized that as per Rule 27 of Order 41, it is the requirement of the court (and not of any of the parties) and the conscience of the court feeling inhibited in satisfactory disposal of lis which rule the exercise of this power.

13. The Apex Court followed the principle laid down in *Municipal Corporation for Greater Bombay Vs. Lala Pancham for Bombay and others*, AIR 1965 SC 1008, *N.Kamalam (Dead) and another Vs. Ayyasamy and another*, (2001) 7 SCC-503, in *State of Gujarat and another Vs. Mahendra Kumar Parshottambhai Desai (dead) by L.Rs.-* (2006) 9 SCC-772. In this case it was held that Rule 27 of Order 41 does not entitle the appellate court to let-in the fresh evidence at the appellate stage. Whether, even without such evidence it can pronounce the judgment, it does not entitle the appellate court to let-in fresh evidence only for the purpose of pronouncement of judgment in a particular way. In *N. Kamalam (supra)*, it was made clear that the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch-up the weak points in the case and to fillup the omission in the court of appeal- it does not authorize any lacunae or gaps in evidence to be filled-up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way. In *Asha Narag Vs. Dr. Ved Prakash Narang*, (1997) 11 SCC 667, the Supreme Court held that it was not the case of the appellant that the trial court had refused to examine her nor is it her case that any new fact had come to her

knowledge which she did not know at the time of trial, necessitating leading of additional evidence. Similarly, it is nobody's case that the High Court required the documents to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. Thus, the Apex Court opined that clause (b) is not attracted.

14. This Court in the case of *Sunil Parashar vs. Kapil Khanna & others* reported in 2017 (3) MPLJ 114, opined that since the Court below has not given any finding that the additional document/evidence was necessary for the Court to deliver the judgment hence necessary ingredient for invoking clause (b) of Rule 27 of Order 41 CPC is not attracted. The judgment cited by Mr. Verma, learned counsel for the appellants are also rendered in the same line.

15. In view of aforesaid analysis, I have no scintilla of doubt that the Court below has erred in remanding the matter back by taking recourse of aforesaid provision of CPC. I also find substance in the argument of learned counsel for the appellants that the lower appellate Court should have decided the question which was framed in para 10 of the impugned judgment. Thereafter, the Court below should have decided the second question framed in para 20 of the impugned judgment. In absence thereto, the impugned judgment has become vulnerable. Resultantly, the impugned judgment and decree dated 21.11.2005 is set aside. The matter is remitted back to the lower appellate Court to decide the

civil appeal No.12-A/2005 afresh by taking into account the findings given hereinabove.

16. Appeal is allowed. No cost.