

(2017) 01 AHC CK 0088

In the Allahabad High Court

Case No : Matters Under Article 227 No. 9747 of 2016

Prakash Narayan Singh

APPELLANT

Vs

Anand Kumar Singh

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

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

Constitution of India, 1950 — Article 227

Uttar Pradesh Municipal Corporation Act, 1959 — Section 472

Citation : (2017) 3 ADJ 239 : (2017) 122 ALR 63

Hon'ble Judges : Manoj Misra, J.

Bench : Single Bench

Advocate : Poonam Srivastava, Advocate, for the Petitioner; Tarun Kumar Tiwari and Vivek Verma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Manoj Misra, J.— Heard counsel for the applicant; Sri Tarun Tiwari for the respondent No.1; and perused the record.

2. The present petition has been filed against the order dated 25.01.2016 passed by the Judge Small Causes Court, Varanasi, in Mutation Appeal No. 8 of 2009 as well as the order dated 20.10.2016 passed by the Additional District Judge Court No. 7, Varanasi in Mutation Second Appeal No. 71 of 2016.

3. By the order dated 25.01.2016 the Court of Judge Small Causes has accepted certain documents produced during the course of appeal on record and has provided opportunity to the other side to file evidence in rebuttal thereof and has also fixed a date for further proceeding. The above order was affirmed by the Additional District Judge, Court No. 07, Varanasi vide order dated 25.01.2016.

4. The learned counsel for the petitioner by placing reliance on the provisions of Order 41, Rule 27 of the Code of Civil Procedure (hereinafter referred to as the Code) has submitted that as any of the conditions enumerated under Order 41,

Rule 27 of the Code for acceptance of additional evidence during appeal was not present, the Appellate Court could not have accepted additional evidence and, therefore, the order dated 25.01.2016 is illegal and is liable to be set aside. It has been submitted that the Court of Judge Small Causes though allowed additional material to be kept on record but has not recorded any satisfaction that the conditions for accepting additional evidence in appeal, as enumerated in Order 41, Rule 27 of the Code, existed.

5. I have given thoughtful consideration to the submission of the learned counsel for the petitioner and have examined the provisions of the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the Act), under which the appeal was filed.

6. Chapter XX of the Act, 1959 deals with "Proceeding Before Judge, District Judge, Magistrate and Others. Sections 471 to 502 of the Act, 1959 fall under Chapter XX. Judge is defined by Section 2(32) of the said Act as: "the Judge" means the Judge of the Court of Small Causes having jurisdiction in the City under the Provincial Small Cause Courts Act, 1887. Section 2(18) of the Act provides that "District Judge" includes an Additional District Judge to whom any function of the District Judge has been transferred under that Act. Section 472 of the Act, provides for an appeal against certain orders. Section 476 of the aforesaid Act provides for an appeal before the District Judge from any decision of the Judge in an appeal under Section 472 of the Act, by which an annual value in excess of Rs. 12,000/- is fixed; and from any other decision of the Judge in an appeal under the said section, upon a question of law or usage having the force of law or the construction of a document.

7. Section 483 of the Act provides that for the purposes of the Chapter, the Judge shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, while trying a suit in respect of: (a) enforcing the attendance of any person and examining him on oath or affirmation; (b) compelling the production of documents; and (c) issuing commissions for the examination of witnesses.

8. Section 499 of the Act, 1959 provides that save as expressly provided by the said Chapter, the provision of the Code of Civil Procedure of 1908, relating to appeals from original decrees shall mutatis mutandis apply to appeals to the District Judge. Sub-section (2) of Section 499 provides that all other matters for which no specific provision has been made under the Act shall be governed by such rules as the State Government may from time to time make after consultation with the High Court.

9. A conspectus of the provisions of Chapter XX of the Act, 1959 including the definition of "the Judge" and "the District Judge," under the Act, noticed herein above, would go to show that by virtue of Section 483 of the Act, the Judge who hears an appeal under Section 472 of the Act has ample power to accept evidence and his power to accept evidence is not limited by the restrictions

imposed by Order 41, Rule 27 CPC inasmuch as by Section 499 of the Act the provisions of the Code, as applicable to the appellate Court, are applicable to appeals to the District Judge which may be an appeal either under Section 476 or Section 481 of the Act. Under the circumstances, importing the principles of Order 41, Rule 27 CPC, as applicable to an ordinary Civil Appellate Court, for restricting the power of "the Judge" to take evidence on record while hearing appeals filed under Section 472 of the U.P. Municipal Corporations Act, 1959, would not be legally justified.

10. In the instant case, by the order impugned dated 25.01.2016 the Court of Judge Small Causes, Varanasi in an appeal under Section 472 has accepted the additional evidence on record and has given opportunity to the other side to file evidence in rebuttal thereof and has also fixed a date for hearing. Accordingly, no fault can be found with the said order and, accordingly, the Additional District Judge rightly dismissed the appeal against the said order.

11. The petition is dismissed.