
Before Swatanter Kumar, J

HUKAM CHAND,—*Petitioner*

versus

PHOOL CHAND & OTHERS,—*Respondents*

C.R. No. 2135 of 1997

12th February, 1998

Code of Civil Procedure, 1908—Order 18, Rl.17-A, Order 18 Rl. 2 & Order 41, Rl. 27—Additional evidence-Permission to lead such evidence—Evidence necessary for effecting a complete judgment.

Held, that the provisions of Order 41, Rule 27 of the Code of Civil Procedure must be read in conjunction with provisions of the order 18, Rule 17-A and Order 18, Rule 2 of the Code. The object of such provisions is to permit the parties to adduce complete evidence in support of their case and to record such evidence so as to completely adjudicate the dispute between the parties and specially where such evidence is necessary for giving an effective and complete relief to the parties. No provisions of the Code can be read in isolation. All provisions must be harmoniously construed so as to achieve the basic object of this procedural law i.e. to give expeditious, effective and complete justice to the parties to a suit.

(Para 7)

Further held, that the pleadings of the same parties in relation to the subject matter of the present suit are certainly documents which would ultimately have a bearing on the matters in issue in the present case. The genuinity of these documents can hardly be doubted because they form part of judicial record. If the reference is being made to the pleadings of the non-applicant, it is beyond understanding as to what prejudice would be caused to the non-applicant, because it is his own documents admittedly relating to the same property. The order allowing the additional evidence, thus, does not suffer from any jurisdiction or any other error apparent on the face of the record which would justify interference by this Court in its revisional jurisdiction.

(Para 9)

I.K. Mehta, Sr. Advocate with Mr. M.S. Kohli, Advocate, *for the petitioner.*

K.K. Aggarwal, Advocate,—*for the Respondents*

JUDGMENT

Swatanter Kumar, J

(1) What is the scope of Order 41, Rule 27 of the Code of Civil Procedure,

is the precise question that falls for determination in this revision. In order to discuss this issue in some elaboration, the Court must advert itself to the various relevant provisions and read them together rather than to read this particular provision in isolation to give interpretation to the relevant rules. The Court has to consider cumulative effect and various pros and cons arising as a result of harmonious construction of these provisions. They must be read in conjunction with the basic provisions relating to adducing of evidence and production of documents etc. It is a settled principle of law that appeal is a continuation of suit and, therefore, the provisions of order 18 of the Code as a whole would necessarily have a bearing on this aspect as well.

(2) However, before discussing this legal controversy in its larger dimensions, it would be necessary to refer to the facts, which in any case, fall in a short compass.

(3) Plaintiff Phool Chand had filed a suit for injunction restraining the defendants Hukam Chand and others from interfering with the plaintiff's possession over the suit property. The plaintiff had claimed himself to be owner in possession of the suit property on the basis of the jamabandi for the year 1981-82. The total land is stated to be measuring 2 Kanals 16 Marlas. This suit was contested by the defendants. Defendant No. 1 claimed the ownership with possession of the property as a bonafide purchaser from the other defendants, —vide sale-deed dated 9th April, 1986.

(4) The learned trial Court after framing the issues and permitting the parties to lead evidence in support of their case, decreed the suit of the plaintiff—vide its judgment and decree dated 1st June, 1990 (Suit No. 286 of 1989). This decree was challenged in appeal before the learned First Appellate Court. Along with the appeal, an application under Order 41, Rule 27 of the Code was filed. Vide this application the respondents wanted to produce on record some documents and lead additional evidence in regard to the pleadings of the parties and order of withdrawal dated 25th November, 1992 passed in suit No. 670 of 1991. This application was allowed by the learned First Appellate court,—vide order dated 28th February, 1997. The learned First Appellate Court considered it proper to deal with the additional evidence and consequently the appeal is still pending before the First Appellate Court. It is the order dated 28th February, 1997 which has been impugned in the present revision petition.

(5) The learned counsel for the petitioner has argued that the learned First Appellate Court has exceeded its jurisdiction in allowing the application for additional evidence. He further argued that there was no justification for permitting the additional evidence because the respondents had ample opportunity at the earlier stage. Thus, according to the learned counsel the application should have been rejected at the very outset. On the contrary, the learned counsel for the respondents argued that this evidence came into existence during the pendency of

the appeal and in any case after the decree was passed and as such they could not have produced this evidence inspite of exercise of due diligence at any stage earlier than the one at which they have prayed for this additional evidence.

(6) In order to appreciate these rival contentions reference to these documents becomes necessary. The defendants in this suit Mr. Hukam Chand had filed another suit being suit No. 670 of 1991 titled as Hukam Chand vs. Nanak Chand and other with regard to the same property which is the subject matter of the present suit. This suit was got dismissed as withdrawn,—vide order dated 25th November, 1992 on the plea that there has been a compromise with the defendants. A decree in the present case was passed on 1st June, 1990. Appeal against the same was preferred by Hukam Chand on 27th July, 1990. It is clear that the suit No. 670 of 1991 was instituted after the passing of the decree in favour of the applicant and was withdrawn on some alleged plea of compromise during the pendency of the appeal. In other words, the documents in question were never available to the applicant during the pendency of the suit. The applicant could not have produced these documents inspite of exercise of any amount of diligence. It is not a case where the applicant can be faulted on the ground of delay, laches or even the negligence, intentional or otherwise. The provisions of Order 41, Rule 27 of the Code primarily require that the evidence which can be permitted to be produced even at the appellate stage, upon satisfaction of the well settled conditions and contentins stipulated under the relevant provisions of the Code are satisfied, such evidence should be permitted to be adduced rather than declining such a request. The Hon'ble Supreme Court of India in a very recent case titled as *Jaipur Development Authority v. Smt. Kailash Wati Devi* (1), while setting aside the judgment of the High Court in declining the additional evidence at the appellate stage in second appeal, permitted the evidence to be taken on record even during the pendency of the Special Leave Peititon. The following observations of the Hon'ble Supreme Court need to be noticed here: —

“All that is required is that the conditions mentioned in the body of sub-rule must be proved to exist. It is not permissible to restrict the sub-clause (aa) for the benefit of only those who have adduced some evidence in the trial Court.

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In the result, the Judgment of the High Court is set aside and the objection to the maintainability or the application is overruled, it will now be for the High Court to examine the application of the appelliant on merits and decide the same in accordance with law. Appeal is allowed as stated above. There will be no order as to costs.”

(1) J.T. 1997 (7) S.C. 643

(7) The provisions of Order 41, Rule 27 of the Code must be read in conjunction with provisions of the Order 18, Rule 17-A and Order 18, Rule 2 of the Code. The object of such provisions is to permit the parties to adduce complete evidence in support of their case and to record such evidence so as to completely adjudicated the dispute between the parties and specially where such evidence is necessary for giving an effective and complete relief to the parties. No provisions of the Code can be read in isolation. All provisions must be harmoniously construed so as to achieve the basic object of this procedural law i.e. to give expeditious, effective and complete justice to the parties to a suit. In this regard reference can be made to the case of Hazara Singh and another versus Bachan Singh and others, Civil Revision No. 3723 of 1996 decided on 21st January, 1998 decided by this Court, wherein relying upon various judgments of this Court, it was held as under:—

“The consistent view of this Court in the above judgments is that the additional evidence of the document(s) the genuinity of which is not in doubt, additional evidence of such documents specially where it will help the Court in effectively adjudicating the matter, should not be denied.”

(8) At this stage it may also be appropriate to refer to the decision of this Court in the case of Banwari versus Nagina, Civil Revision No. 4287 of 1997, decided on 6th February, 1998.

The learned counsel for the petitioner has relied upon the judgments in the cases of *Weston Electronics Limited v. M/s Chand Radiq and other* (2), *Ved Parkash Saini v. Mohinder Lal* (3), and *Arjan Singh v. Jagdish Kaur and another*, (4) to further argue that the provisions relating to production of additional evidence should be construed liberally so as to meets the ends of justice. There is no doubt about these judgments. The various Benches of this Court had allowed production of additional evidence, though certainly some negligence was attributable to the parties. These judgments are certainly of some help to the applicant and the order passed by the learned First Appellate Court appears to be in consonance with these settled principles.

(9) Reference in this regard can also be made to the judgment in the case of *Ganpati Udhog and another v. Punjab National Bank and others* (5), where the learned Judge after discussing in great detail the provisions of Order 41 Rule 27 of the Code held as under:—

“9. In *Kishan and another v. Narain Dass and others*, AIR 1989 P&H 267, a learned single Judge gave a wider interpretation to Order

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- (2) (1988-1) P.L.R. 691
(3) (1993-3) P.L.R. 395
(4) (1990-2) P.L.R. 319
(5) 1996 P.L.J. 344

41 Rule 27(1)(b) of the Code of Civil Procedure when he observed:

“Rule 27 of 0.41 of the Code of Civil Procedure, the appellate Court can receive additional evidence not only when it requires such evidence to enable to pronounce the 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 the judgment 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.

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“23. In my opinion, there is no error in the impugned order requiring interference by this Court under Section 115 of the Code of Civil Procedure. I am of the view that even if the case of the respondent may not be covered by Order 41 Rule 27(1)(aa), the impugned order can be sustained with reference to Order 47 Rule 27(b) of the Code of Civil Procedure.”

In the present case the learned First Appellate Court has rightly commented upon the relevancy of the documents in question and the application cannot be said to be lacking in bonafides. The pleadings of the same parties in relation to the subject matter of the present suit are certainly documents which would ultimately have a bearing on the matters in issue in the present case. The genuinity of these documents can hardly be doubted because they form part of judicial record in suit No. 670 of 1991. If the reference is being made to the pleadings of the non-applicant, it is beyond understanding as to what prejudice would be caused to the non-applicant, because it is his own documents admittedly relating to the same property. No matter from which point of view this case is examined, the impugned order cannot be said to be an order which can be permitted as an order passed in excess of jurisdiction vested in the Court. The order does not suffer from any jurisdictional or other error apparent on the face of the record which would justify interference by this Court in its revisional jurisdiction.

(10) For the reasons aforesated the revision petition is dismissed. However, there shall be no order as to costs.

S.C.K.