

Jaipur Development Authority

Vs

Kailashwati Devi

(S. C. Sen, M. Jagannadha Rao JJ)

02.10.1997

JUDGMENT

M.JAGANNADHA RAO

1. Leave granted.

2. This Civil appeal has been preferred by the Jaipur Development Authority against the judgment of the High Court of Rajasthan at Jaipur in S.B. Civil First Appeal No. 19 of 1995 dated 10.12.1996. By that judgment, the High Court rejected an application filed by the appellant for leading 'additional evidence' under Order 41 Rule 27, Code of Civil Procedure, in a pending first appeal on the ground that the appellant had not led any evidence in the trial court. The Court took the above view following a decision of the Guhati High Court in Md. Saifur Rehamn Vs. State of Assam & Others AIR 1985 Guhati 1073 to the effect that the word additional in Order 41 Rule 27 C.P.C. means one "joining or uniting one thing to another so as to form one aggregate" and that a party was disentitled to produce any additional evidence if he had not produced any evidence in the trial Court.

3. The facts are as follows:-

The suit was filed by the respondent questioning certain and acquisition proceedings and seeking permanent injunction on the basis that the plaintiff was in possession. The appellant got impleaded in the trial Court as a defendant. The suit was decreed ex-parte. Appeal was preferred by the appellant to the High Court the two documents were sought to be filed by the appellant under Order 41 Rule 27 to show that possession was taken over from the plaintiff long back. This application was rejected by the High Court on the ground that the appellant-defendant had not adduced any evidence in the trial court. It is this order that is questioned in this appeal.

4. We are of the view that the interpretation put in by the High Court of Rajasthan and the High Court of Guhati on the word 'additional' in clause (aa) of Order 41 Rule 27 C.P.O. is not correct.

5. The provisions of Rule 27 of Order 41 in so far as they are relevant read as follows :

"Rule 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)

the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b)..... the appellate court may allow such evidence to be produced or witness to be examined.

(2) .....

6. The intention of the sub-rule, in our view, is that a party who, for the reasons mentioned in the sub clause, was unable to produce the evidence in the trial court, should be enabled to produce the same in the appellate court. The sub- rule mentions the conditions which must be complied with by the party producing the additional evidences, namely, that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him in the trial court. It is not one of the conditions that the party seeking to introduce additional" evidence must have also been one who was led some evidence in the trial court. Such a view amounts to introducing an additional condition not contemplated by the sub-rule. No distinction was intended by the sub-rule between a party who has produced some evidence in the trial court and one who has adduced no evidence in the trial Court. All that is required is that the conditions mentioned in the body or the 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.

7. The view taken by the Guhati High Court is not therefore correct. A similar view taken by the Lahore High Court in Gurbaksh Singh Vs. (Firm) Shankar Das (AIR 1936 Lahore 71) is also not correct.

8. 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 appellant or merits and decide the same in accordance with law. Appeal is allowed as stated above. There will be no order as to costs.