

SUPREME COURT OF INDIA

Wadi

Vs.

Amilal

(S Quadri and S Variava JJ.)

12.07.2002

ORDER

1. Heard Mr. B.D. Sharma, learned counsel for the petitioner, and Mr. Rohit Minocha, learned counsel for respondent No. 1.

2. Leave is granted.

3. This appeal is directed against the judgment of the division bench of the High Court of judicature for Rajasthan (Jodhpur bench) in special appeal No. 1152 of 1998 dated April 10, 2000.

4. The short point that arises for consideration in this appeal is : whether the board of revenue was justified in declining to admit a certified copy of mutation No. 49 dated June 11, 1961 filed as additional evidence under Order 41 Rule 27 of the Code of Civil Procedure?

5. One Rupa Ram was khatedar tenant of 130 bighas of the agricultural land situated in village Dakwa, tehsil Rajgarh, district Churu, Rajasthan (for short, 'the suit land'). He had a son and three daughters. The appellant is one of his daughters and the first respondent is his son. She along with another sister filed the suit, out of which this appeal arises, for a declaration that they had half share in the suit land and the first respondent had only 1/4th share: and that the sale effected by the first respondent in favour of the second respondent was null and void and did not operate against them. The germane issue in the suit was whether Rupa Ram died in the year 1951 or in 1960/61. If he had died after the coming into force of the Hindu Succession Act, 1956, his daughters would be entitled to a share in the suit land. But if he had died prior to the coming into force of the said Act, they would not be entitled to a share in the suit land. Taking the view that Rupa Ram died in 1951, the assistant collector dismissed the suit. On appeal by the unsuccessful plaintiffs, the revenue appellate authority, before whom a xerox copy of mutation No. 49 dated June 11, 1961, was produced, took note of that document and set aside the order of the trial court; it remanded the case to the assistant collector for fresh disposal in accordance with law and thus, allowed the appeal on May 31, 1991. Against the said order of the appellate authority, the first respondent went in appeal before the board of revenue, Rajasthan. Having noted that an application under Order 41 Rule 27 C.P.C. to place a certified copy of the mutation No. 49 dated June 11, 1961

was filed before it, the board of revenue declined to admit it in evidence and set aside the order of the appellate authority by allowing the appeal on April 30, 1997. That order was upheld by a learned single judge of the High Court in writ petition No. 2652 of 1997 by his order dated August 19, 1998. The appellant unsuccessfully pursued the matter in special appeal No. 1152 of 1998 before a division bench of the High Court, which was dismissed on April 10, 2000. Aggrieved by the said order, the appellant is before us in this appeal.

6. It cannot be disputed that the correct date of death of Rupa Ram would clinch the issue and enable the court to pronounce a satisfactory judgment in the suit. A perusal of mutation No. 49, if proved, would throw considerable light on the issue. On the question of admission of that document by the appellate court, it would be necessary to notice the relevant provision of Order 41 Rule 27 of the Code of Civil Procedure:

"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) *****

(a) *****

(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."

7. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with Clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.

8. In this case, on the question whether Rupa Ram died in 1951 or in 1960/61, the revenue appellate authority referred to a copy of mutation No. 49 and remanded the case to the original authority. The document in question would throw light on the germane issue and is, therefore, necessary for pronouncing judgment in the case on the question whether remand of the case was justified. In our view, the board of revenue ought to have admitted the additional evidence under Clause (b) aforementioned. It erred in declining to admit that document as additional evidence.

9. We, accordinally, set aside the impugned order of the High Court confirming the orders of the learned single judge and of the board of revenue. Consequently, the order of the revenue appellate authority is restored. The case is remanded to the assistant collector for a fresh disposal of the suit in accordance with law after giving due opportunity to the first respondent to lead further evidence in rebuttal, if he so desires.

10. The civil appeal is, accordingly, allowed but in the circumstances of the case we make no order as to costs.