



2024:JKLHC-JMU:272

Serial No. 37

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- OW104 No. 20/2014
IA No. 27/2014

1. Gulab Singh Age 45 yrs
2. Prem Singh Age 50 yrs
3. Jagdev Singh age 37 yrs

**All sons of Gulwant Singh R/o Halqa Tokerian Tehsil and District
Jammu.**

.....Appellant(s)/Petitioner(s)

Through: Mr. Surinder Singh, Advocate.

Vs

**Kuldeep Singh S/o Munshi Singh R/o Galbadey
ChakTehsil and District Jammu**

..... Respondent(s)

Through: Mr. P. S. Parmar, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**JUDGMENT
(19.02.2024)**

(ORAL)

- 01.** The petitioners have invoked the Supervisory Jurisdiction of this Court enshrined in Article 227 of the Constitution of India while seeking quashment of order dated 10.01.2014 (for short "***the impugned order***") passed by the court of Additional District Judge, Jammu (for short "***the appellate court***") upon an application filed under Order 41 Rule 27 C.P.C by the petitioners herein for leading additional evidence in the appeal filed by the petitioners herein arising



out of judgment and decree dated 13.04.2011 passed by the court of 2nd Additional Munsiff, Jammu (for short "**the trial court**") in civil suit titled as "*Kuldeep Singh Vs Gulab Singh and Ors.*"

- 02.** Facts emerging from the record would reveal that the plaintiff-respondent herein obtained a judgment and decree dated 13.04.2011 in the suit (*supra*) for permanent injunction filed against the defendants-petitioners in respect of land measuring 02 Marlas covered under Survey No. 91 min Khata No. 55 Khewat No. 27 situated at Mud Tehsil and District Jammu.
- 03.** Aggrieved of the judgment and decree dated 13.04.2011, the defendants-petitioners herein preferred civil first appeal before the appellate court and during its pendency filed an application under Order 41 Rule 27 C.P.C for leading additional evidence stating therein that in the suit during its trial, both the plaintiff as well as defendants led their respective evidence, however, the plaintiff-respondent herein did not prove the proper description and location of the land in question being subject matter of the suit claimed to have been purchased by him from one Vijay Kumar through sale deed dated 30.11.2004 and that instead one Lal Chand



Gandotra from whom the father of the defendants-petitioners herein purchased the land in dispute had deposed before the trial court while appearing as the witness of the defendants-petitioners herein that he had purchased the land in question from one Sardu Ram Batwal in the year 1982 where he was running a school and upon purchase of another land for School, he sold the land in question to the father of the defendants-petitioners herein where they started construction of shops, but could not complete the same and that the said statement of Lal Chand Gandotra came to be corroborated by Vijay Kumar who had sold the land in question to the plaintiff-respondent herein and that the trial court decided issues (1) & (3) together in favour of the plaintiff-respondent herein holding the plaintiff-respondent herein to be in possession of the land in question on the basis of sale deed which was never proved and exhibited and that the plaintiff-respondent herein failed to get the land in question demarcated by the revenue authorities despite having filed a suit thereto before Director Land Records inasmuch as an application for demarcation of the land in dispute and that the appellants-petitioners herein could not produce the revenue officials to prove that the land in question does not fall in Survey No. 91 but falls



under Survey Nos. 92 & 97 and, thus, additional evidence for establishing the said fact is necessitated which evidence would in the process enable the court to pronounce judgment as the judgment of the trial court suffers from inherent lacuna and defects.

- 04.** The appellate court upon considering the said application filed by the appellants-petitioners herein after inviting objections from the plaintiff-respondent herein in terms of the impugned order *dismissed* the same holding that the application does not fall within the purview of Order 41 Rule 27 C.P.C for adducing additional evidence.
- 05.** The petitioners herein being appellants before the appellate court have questioned the impugned order on multiple grounds fundamentally on the ground that the impugned order passed by the appellate court on the face of it is incorrect having been passed without, application of mind and going through the material on record overlooking the law and the facts, thus, in the process having resulted into failure of justice.

Heard learned counsel for the parties and perused the record.



06. Before proceeding to address to the issues raised by the petitioners in the instant petition, it would be relevant and significant to refer hereunder to the provisions of Order 41 Rule 27 C.P.C being relevant and germane herein:-

“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) *The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*

[(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 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.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

A bare perusal of the aforesaid provisions tends to show that sub rule (1) of Rule 27 begins with a negative condition that viz **“the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court”** clearly



suggesting the legislative intent and as a general rule, providing that an appellate court should decide an appeal on the evidence led by the parties before the trial court and should not admit additional evidence in the appeal. The said sub rule (1) of Rule 27 has to be read conjointly with Section 107 (1) (a) C.P.C which requires the appellate court to determine a case finally, whereas Order 41 Rule 24 as well enjoins upon the appellate court to determine the case finally where evidence on record is sufficient for such determination.

Thus, what emerges from the above provisions of Code of Civil Procedure is that normally an appellate court should not allow additional evidence to be produced and decide an appeal on the basis of the material on record.

- 07.** Having laid down general rule *supra* as to the leading of additional evidence in negative form, yet said Order 47 Rule (27) proceeds to carve out an exceptions and enumerates the circumstances in which an appellate court can permit leading of additional evidence under clause (a), (aa) or (b) of sub rule (1) of Rule 27.

Clause (a) of Rule 27 (1) of Order 41 declares that where the trial court has refused to admit evidence which was tendered and which ought to have been



admitted, the appellate court may admit such evidence at the appellate stage. Thus, suggesting that before admitting additional evidence under the said clause (a), the appellate court must be satisfied with the trial court was unjustified in refusing to admit such evidence.

Clause (aa) (1) of Rule 27 allows a party to adduce additional evidence, if party, establishes that it was unable to produce such evidence in the trial court in spite of due diligence or best efforts on his part. Thus, postulating that a party has to establish to the satisfaction of the appellate court that in spite of due diligence, it could not produce the evidence which is now sought to be produced in the appeal.

Clause (b) of sub rule (1) of Rule 27 of Order 41 covers the cases wherein the appellate court may itself require additional evidence (production of document or examination of witness) either for pronouncement of judgment or for any other substantial cause. Thus, what emanates from the plain reading of clause (b) *supra* is that the power of the appellate court to allow a document to be produced or a witness to be examined is related to



those cases where the appellate court finds it necessary to pronounce judgment (or for any other substantial cause).

It also emanates from clause (b) *supra* that one of the grounds available to the appellate court to allow additional evidence in appeal is to enable it to pronounce judgment. The Apex Court while dealing with this clause of clause (b) *supra* in case titled as **“Mahavir Singh & Ors. Vs Naresh Chandra & Anr.”**

reported in **2001 (1) SCC 309** held that a mere difficulty in coming to a decision is not sufficient to admit additional evidence.

Under clause (b) *supra*, the appellate court can also admit additional evidence for any other substantial cause which expression **“for any other substantial”** cause has been held to be read with the word **“requires”** in the beginning of clause (b) of Rule 27 clause (1) as has been laid down by the Apex Court in case titled as **“Kessowji Issur Vs The Great Indian Peninsula Railway Company”** reported in **(1907) BOMLR 671.**

- 08.** Before proceeding further in the matter it would be appropriate to refer to a judgment of the Apex Court in



case titled as **“Union of India Vs Ibrahim Uddin & Anr.”** reported in **(2012) 8 SCC 148** pertaining to Order 41 Rule 27 wherein following has been observed held at paras 47 & 49 as under:-.

“48. To sum up on the issue, it may be held that application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite condition incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. 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.”

- 09.** Keeping in mind the aforesaid position of law and reverting back the case in hand, the application filed by the appellants-petitioners herein before the appellate court seeking leave of the appellate court to lead



additional evidence assume a significance and since the said application is relevant to the controversy and issues involved and raised in the instant petition, the said application is extracted and reproduced hereunder:-

“1. That respondent/plaintiff filed a suit for permanent prohibitory injunction against the appellants restraining them from raising any sort of construction or causing any sort of interference or encroaching upon the land of respondent/plaintiff measuring 2 marlas falling khasra no. 91 min khata no. 55 and khewat no. 27 situated at Marh Tehsil and district Jammu.

2. That the respondent/plaintiff filed the suit on the basis of a sale deed executed in his favour by Vijay Kumar S/o Rattan Lal in respect of land measuring 2 marlas comprising khasra no. 91 min the appellants appeared before the court below and filed their written statement by submitting that plaintiff was not in possession of the land in dispute which is under the peaceful physical possession of the appellants from the last 25 yrs and the land under dispute falls under khasra no. 92 and 97, which has been covered by pacca 4 wals and gate has been installed thereon, the sale deed executed by Vijay Kumar in favour of respondent/plaintiff is without any description of the plot of 2 marlas and tatima.

3. That the appellants / defendants have specifically submitted in the written statement that land in dispute has been purchased by them from Lal Chand Gandotra where he was running a Academy and when he shifted the Academy from that place, father of the appellants purchased said land in 1992.

4. That respondent also filed an application before the Naib Tehsildar for demarcation of land in dispute and also filed the suit before the Director Land Record Jammu and without getting the land in dispute demarcated the respondent/plaintiff filed the suit in the court below.

5. That the ld. Court below framed issues and issue no. 3 was whether suit land actually comprised under survey no. 92/97 and same is in continuous possession defendants from the last 25 yrs.'

6. That both the parties lead evidence and the plaintiff / respondent could not prove the proper description and location of the land purchased by him from Vijay Kumar through sale deed registered on 30-11-2004.

7. That the Kuldeep Singh respondent could not identify the land purchased by him from Vijay Kumar while making his statement in the court nor land purchased by him has been properly described in the sale deed and tatima, where as the Lal Chand Gandotra from whom the father of the appellants purchased land in dispute, he



specifically stated in the court below that he purchased land in dispute from Sardu Ram Batwal in the year 1982 where he was running a school and when he purchased another land for School he sold the land in dispute to the father of appellants where he started construction of shops but could not complete the same because he fell ill.

8. That the statement of the Lal Chand Gandotra has been corroborated by Vijay Kumar who allegedly executed sale deed in favour of the respondent in respect of land in dispute.

9. That the ld. Trial Court decided issue no. 1 and 3 jointly and held the plaintiff/respondent in possession of the land on the basis of the sale deed which has not been proved and exhibited under the provisions of the Evidence Act.

10. That the trial court has wrongly held that plaintiff is able to prove that he is owner in possession of suit land by virtue of duly registered sale deed.

11. That since the plaintiff/respondent failed to get the land in dispute demarcated by the revenue authorities despite the fact that he filed suit before the Director Land Record and an application before the Tehsildar for demarcation of the land in dispute and the appellants defendants could not produce the Revenue Official to prove that land under dispute does not fall in khasra no. 91 but falls under khasra no. 92 and 97 the appellants are seeking admission of additional evidence in order to establish that land under dispute falls under khasra no. 92 and 97 and not under khasra no. 91, which the appellants could adduce before the trial court.

12. That the evidence sought to be adduced is otherwise necessary for enabling this Hon'ble Court to pronounce judgement because the evidence recorded by the trial court suffers from inherent lacuna and defects. therefore this Hon'ble court will not be able to pronounce judgement on the material before it without taking into consideration the additional evidence sought to be produced.

13. That no prejudice will cause to the respondent/plaintiff because he would have an opportunity to rebut such additional evidence. The additional evidence sought to be adduced by appellants will be relevant for determination of issue no. 3 framed by the trial court.

An affidavit in support of application is attached herewith.

It is therefore prayed that application of the appellants be allowed and they may be allowed to lead additional evidence by producing Patwari Halka Marh as witness to prove issue no. 3 framed by the trial court whether land in dispute actually falls under khasra no. 92 and 97 is in physical continuous possession of appellants/defendants.



What emerges from a plain reading of the aforesaid application is that the appellants-petitioners have not anywhere spelt out in the application that the trial court refused to admit evidence which they intended to adduce before it, thus, excluding the case of the appellants-petitioners herein from the purview of clause (a) sub rule (1) of Rule (27) of Order 41.

Further closer examination of the application (*supra*) also tends to show that the appellants-petitioners herein have no where stated therein that notwithstanding the exercise of due diligence the evidence which is sought to be produced was not within their knowledge or could not after the exercise of due diligence produced at the time when the decree/appealed against was passed, thus, bringing out the case of the appellants-petitioners herein outside the purview of clause (aa) of sub rule (1) of Rule (27) of Order 41.

- 10.** Insofar as the applicability of clause (b) of sub rule (1) of Rule (27) of Order 41 is concerned, though appellate court has not recorded and returned any finding thereto that it did not require the additional evidence in the matter to enable it to pronounce judgment or for any other substantial cause, yet having regard to the nature



of suit filed by the plaintiff-respondent herein, the issues framed therein the said suit and the evidence led both by the plaintiff-respondent herein as also the defendants-petitioners herein, the plaintiff-respondent herein has proved by credible evidence issues pertaining to the issue of owner in possession of suit land by virtue of sale deed dated 30.11.2004, whereas on the contrary the defendants-petitioners herein failed to prove issue (3) onus whereof was upon them to prove that the suit land actually comprised under Survey Nos. 92 & 97 and that the suit land was in their continuous possession from the last 25 years. No documentary evidence has been produced by the defendants-petitioners herein to discard the evidence led by the plaintiff-respondent herein *qua* the ownership of land in question except the statement of Lal Chand Gandotra from whom the defendants-petitioners herein claim to have been purchased the land and who in turn claimed to have purchased the land from one Sardu Ram Batwal.

Thus, it is evident that the defendants-petitioners herein have failed to produce any clinching documentary evidence to prove that they are the owners of the land or else that the land owned and possessed by the plaintiff-respondent herein pursuant to the sale deed dated



30.11.2004 falls under Survey Nos. 92 & 97 instead of Survey No. 91 min. In presence of such clinching documentary evidence led by the plaintiff-respondent herein and there being no such evidence in rebuttal thereto produced by the defendants-petitioners herein, the case of the petitioners cannot said to be falling even under clause (b) of sub rule (1) of Rule (27) of Order 41 where under it could be said that the appellate court would itself require the additional evidence (production of document or examination of witness) either for pronouncement of judgment or for any other substantial cause.

11. For what has been observed, considered and analyzed hereinabove, this Court is not inclined to exercise Supervisory Jurisdiction enshrined in Article 227 of the Constitution of India in the instant case and to interfere with the impugned order dated 10.01.2014. Resultantly, petition fails and is, accordingly, **dismissed**.

(JAVED IQBAL WANI)
JUDGE

JAMMU
19.02.2024

Bunty

Whether the order is speaking: **Yes**

Whether the order is reportable: **Yes**