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JAIPUR DEVELOPMENT AUTHORITY

v.

SMT. KAILASHWATI DEVI

SEPTEMBER 2, 1997

B

[SUHAS .C. SEN AND M. JAGANNADHA RAO, JJ.]

C

Civil procedure Code, 1908 : Order 41, Rule 27(1)(aa)—Additional evidence—Eligibility for being entitled to produce—Held, not confined to parties who have adduced some evidence before the trial court—Even a party who produced no evidence before the trial court can seek such permission—Object of the Rule.

D

The High Court had rejected the appellant's application for leading additional evidence under Order 41, Rule 27, CPC in a pending first appeal on the ground that the appellant had not led any evidence in the trial court. Hence this appeal.

Allowing the appeal, the Court

E

HELD : The intention of Rule 27 (1)(aa) of Order 41 C.P.C is that a party who, for the reasons mentioned therein, was unable to produce the evidence in the trial court, should be enabled to produce the same in the appellate court. It mentions conditions which must be complied with by the party producing the additional evidence. It is not one of the conditions that the party seeking to introduce additional evidence must have also been one who has 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 of the sub-rule must be proved to exist. It is not permissible to restrict Rule 27 (1)(aa) for the benefit of only those who have adduced some evidence in the trial court. [666-F-H]

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G

Mohd. Saifur Rahman v. State of Assam, AIR (1985) Gau 107, approved.

H

Gurbakhsh Singh v. Shankar Das Sadhu Ram, All (1936) Lah 71, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5948 of A
1997.

From the Judgment and Order dated 10.12.96 of the Rajasthan High
Court in S.B.C.F.A. No. 19 of 1996.

S.K. Bhattacharya for the Appellant. B

Nemo for the Respondent.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Leave granted. C

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 Judg-
ment, the High Court rejected an application filed by the appellant for
leading "additional evidence" under Order 41 Rule 27, Code of Civil D
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 Gauhati High Court in *Md. Saifur Rahman v.
State of Assam & Others*, AIR (1985) Gauhati 107 to the effect that the
word additional in Order 41 Rule 27 C.P.C meant the "joining or uniting E
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.

The facts are as follows : F

The suit was filed by the respondent questioning certain land 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 and two documents were sought to be filed G
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.

We are of the view that the interpretation put in by the High Court H

A of Rajasthan and the High Court of Gauhati on the word additional in clause (aa) of Order 41 Rule 27 C.P.C. is not correct.

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

B "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.

C (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

D (b)

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

E (2).....

F 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 evidence, 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 has 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

of 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. A

The view taken by the Gauhati High Court is not therefore correct. A similar view taken by the Lahore High Court in *Gurbakash Singh v. (Firm) Shankar Das*, AIR (1936) Lahore 71 is also not correct. B

In the result, the judgment of the High Court is set aside and the objection to the maintainability of 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. C

R.K.S.

Appeal allowed.