
(2010) 3 CivCC 682 : (2011) 2 RCR(Civil) 436 : (2011) 2 RCR(Civil) 436

Allahabad High Court

Case No: Writ Petition No. 8780 of 2010

Ram Chander Lal

APPELLANT

Vs

Jamuna Prasad

RESPONDENT

Date of Decision: Feb. 22, 2010

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 154, 163, 164, 165, 166

Citation: (2010) 3 CivCC 682 : (2011) 2 RCR(Civil) 436 : (2011) 2 RCR(Civil) 436

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Krishna Murari, J.

Heard Sri Triloki Nath, learned Counsel for the Petitioners and Sri Manu Saxena, who has put in appearance on behalf of Respondents No. 2 and 3.

2. Facts, giving rise to the dispute are that predecessor-in-interest of the Petitioners late Angan Lal filed a suit against Respondent No. 4 and one Har Dayal (since deceased and now represented by Respondents No. 1 to 3) for specific performance of contract, which was decreed by the trial court vide judgment and decree dated 24.4.1974. Deceased Defendant Har Dayal filed first appeal before this Court which was pending.

Subsequently, on account of change of pecuniary jurisdiction, the said appeal was transferred back to be decided by District Judge and registered as Appeal No. 1 of 2003. An application under Order LXI Rule 27 CPC was moved by Petitioners to bring on record Khatauni 1382 F. to 1392 F. of village Kangawa, Khatauni 1386 F. to 1391 F. of village Barkhera and Khatauni of Khata No. 8 of village Barkhera relating to Angan Lal as additional evidence. The said documents were being sought to be brought on record on the allegation that when the suit was filed in 1972, the provisions of Section 163 to 167, U.P. Zamindari Abolition & Land Reforms Act were different and they were drastically

amended with effect from 6.3.1981 and hence the said documents were necessary to be brought on record for effective adjudication of the dispute. Court below vide order dated 9.12.2009 dismissed the application.

3. It is contended by learned Counsel for the Petitioners that documents were necessary for complete and effective adjudication of the dispute between the parties but the court below has wrongly and illegally rejected the same. It has further been submitted that application has been rejected on erroneous consideration that since the amendments were made in the U.P. Zamindari Abolition & Land Reforms Act in 1981 and there is No. justification why the said documents were not filed thereafter without considering the fact that appeal was pending before this Court and when the same was transferred in 2000 the original record was lost and was reconstructed in the year 2003 as such there was No. occasion for the Petitioners to file documents.

4. In reply, it has been submitted by the learned Counsel for Respondents that it is very well settled that unless the conditions prescribed by Order LXI Rule 27 CPC are satisfied, the documents cannot be admitted as additional evidence and in the present case since the documents do not stand the test as such the same has rightly been declined by the court below to be taken on record as additional evidence.

5. I have considered the arguments advanced by the learned Counsel for the parties and perused the record.

6. Lower appellate court has rejected the application on the finding that before the trial court one of the issue, namely, issue No. 7 was whether the agreement to sell, if executed, would contravene the provisions of Section 154 of the U.P. Zamindari Abolition and Land Reforms Act and finding on this issue has already been returned by the trial court and there is absolutely No. reason that why these documents were not filed in evidence before the trial court. It has been held that in so far as ceiling on holding more than 12-1/2 acres of land was already there in the U.P. Zamindari Abolition and Land Reforms Act and hence it cannot be said that the documents are being brought on account of amendment brought in 1981. Lower appellate court has further observed that appeal was argued on behalf of the parties for 10 days and the amendment application has been moved on the day when the case was fixed for delivery of judgment.

7. Application for additional evidence filed by the Petitioners was based on Clause (aa) of Sub-rule (1) of Rule 27 of Order LXI CPC It was for the Petitioners to show that ingredients or conditions precedent mentioned in Clause (aa) were satisfied. The lower appellate below has categorically held that there is absolutely No. reason why the said documents could not have been filed at the stage of trial nor the reasons mentioned that documents were being brought on record after amendment in the U.P. Zamindari Abolition and Land Reforms Act in the year 1981 hold good in as much as ceiling on the holding of more than 12-1/2 acres of land was always there.

8. It is well settled that parties to the lis are not entitled to produce additional evidence as a matter of course or routine unless they satisfy the test mentioned in Order LXI Rule 27 CPC. Reference may be made to the judgment of Hon"ble Apex Court in the case of K.R. Mohan Reddy v. Net Work Inc. 2007 (14) SCC 257 and [Basayya I. Mathad Vs. Rudrayya S. Mathad and Others,](#)

9. Since the documents sought to be brought on record by the Petitioners by way of additional evidence did not satisfy the test laid down under Order LXI Rule 27 CPC for admitting additional evidence, the court below appears to have committed No. illegality in rejecting the application, which may warrant any interference by this Court.

10. The writ petition accordingly fails and stands dismissed in limine.

Petition dismissed.