

(2010) 04 JH CK 0061
Jharkhand High Court
Case No: None

Union of India (UOI), Lieutenant
Colonel and Secretary, Ministry
of Defence, Govt. of India

APPELLANT

Vs

Anamika Sahkari Grih Nirman
Sarmittee Ltd., State of Bihar,
Deputy Commissioner and Land
Acquisition Officer

RESPONDENT

Date of Decision: April 30, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, 151

Citation: (2010) 4 LJLR 537

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment dated 22.6.2007 passed by Shri Manoranjan Kavi, Xth Additional Judicial Commissioner-cum-IIIRD Special Judge, CBI (AHD Cases), Ranchi in Title Appeal No. 130 of 2003, by which judgment after setting aside the judgment and decree passed by Sri Ashok Kumar Pathak, Sub Judge-VII, Ranchi dated 12.11.2003 whereby and whereunder he remanded the case back to the trial court for retrial.

2. It is submitted by the learned Counsel for the appellants that it will appear from the impugned judgment that instead of deciding the appeal on its own merit the learned appellate court, in para-14 of its judgment, only enumerated that the plaintiffs-respondents have filed near about eighteen (18) documents, but they have not proved a single document out of 18 sale deeds. The plaintiffs-appellants filed a petition under Order 41 Rule 27 read with Section 151 C.P.C. on 23.2.2007 with a

prayer for accepting the documents as additional evidence and the lower appellate court gave a finding that since three (3) sale deeds such as sale deed No. 11600 dated 28.12.89; sale deed No. 4289 dated 19.4.88 and sale deed No. 1063 dated 18.1.90, cannot be taken into evidence as they are Xerox Copies and further gave a finding at para 16 that since Xerox Copies cannot be marked as exhibited. Hence the application under Order 41 Rule 27 read with Section 151 C.P.C. cannot be allowed as the plaintiffs cannot prove their title on the basis of the aforesaid documents. However, in the last paragraph even after coming to a conclusion that the plaintiffs cannot prove their title, remanded the matter for retrial to the court below and as such the entire approach and finding of the learned appellate court is bad in law and fit to be set aside. The learned Xth Additional Judicial Commissioner should have decided the matter on the evidences and documents available on the record and he should have given a finding after considering the merit of both the parties.

3. On the other hand, learned Counsel for the respondents submitted that the finding of the learned Xth Additional Judicial Commissioner, in para 16, is erroneous. He has further submitted that without properly looking into the documents available on the record the learned Xth Additional Judicial Commissioner came to a finding that the sale deeds such as sale deed No. 11600 dated 28.12.89; sale deed No. 4289 dated 19.4.88 and sale deed No. 1063 dated 18.1.90, are not available in original on the record and since they are only in Xerox Copies as they cannot be marked and hence even if their application under Order 41 Rule 27 read with Section 151 C.P.C. is allowed as the plaintiffs will not be able to prove their title. It is further submitted that from perusal of the lower court record available in this Court, it appears that all these three (3) sale deeds are available on the record in original.

4. After hearing the arguments of both the parties and perused the lower court records on running page No. 622 sale deed No. 1063 dated 18.1.90; on running page No. 626 sale deed No. 11600 dated 28.12.89 and on running page No. 630 sale deed No. 4289 dated 19.4.88, it was found that three sale deeds are available on the record in its original form and as such the finding of the learned appellate court that these three sale deeds are available in Xerox Copies and hence they cannot be marked as exhibit and the plaintiffs cannot prove their title on the basis of the Xerox Copies is not correct.

5. After hearing both the parties that the learned lower appellate court has committed an error of record in coming to a conclusion that although he is ready to allow the application under Order 41 Rule 27 read with Section 151 C.P.C, but no useful purpose will be served since the documents filed by the plaintiffs are available in Xerox Copies, but since they are available in original as pointed out above and the learned lower Appellate Court should have passed an appropriate order. In that view of the matter, the impugned judgment of remand is bad in law and only fit to be set aside.

6. Accordingly, the appeal is allowed and the impugned judgment and decree dated 22.6.2007 passed by Shri Manoranjan Kavi, Xth Additional Judicial Commissioner-cum-IIIrd Special Judge, CBI (AHD Cases), Ranchi in Title Appeal No. 130 of 2003 is set aside. However, the matter is remanded back to the Xth Additional Judicial Commissioner-cum-IIIrd Special Judge, CBI (AHD Cases), Ranchi for disposal of the application filed by the plaintiffs under Order 41 Rule 27 read with Section 151 C.P.C. after hearing both the parties and thereafter to hear the matter at length and dispose of the appeal on the materials and documents available on record without being prejudiced by this order.