

(2010) 08 CAL CK 0091

Calcutta High Court

Case No: C.O. No. 2462 of 2009

Sk. Harun Rasid and Others

APPELLANT

Vs

Shambhunath Samanta and
Another

RESPONDENT

Date of Decision: Aug. 12, 2010

Acts Referred:

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

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Soumak Bera, for the Appellant;None, for the Respondent

Final Decision: Allowed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the plaintiffs and is directed against the order No. 17 dated June 30, 2009 passed by the learned Civil Judge (Senior Division), Ghatal, District : Paschim Medinipur in Title Appeal No. 12 of 2008 arising out of the judgment passed in Title Suit No. 98 of 2004 passed by the learned Civil Judge (Junior Division), Ghatal, District - Paschim Medinipur.

2. The plaintiffs/petitioners filed the suit for declaration of their possession with regard to the suit property and for permanent injunction against the defendants. In that suit, the defendants/opposite parties contested the suit by filing a written statement. Upon analysing the evidence on record, the learned Civil Judge (Junior Division) dismissed the Title Suit No. 98 of 2004 on contests on April 23, 2008. Being aggrieved, the plaintiffs/petitioners filed an appeal and in that appeal they filed an application dated 12.03.2009 for marking the R. S. record of rights as exhibit and that application was rejected by the impugned order. Being aggrieved, the plaintiffs/petitioners have preferred this application.

3. Therefore, the short question involved in this application is whether additional evidence could be adduced at the stage of appeal under Order 41 Rule 27 of the Code of Civil Procedure.
4. The plaintiffs/petitioners have specifically asserted in the plaint that they are the owners of the suit property and when the defendants/opposite parties wanted to make construction on their land which is adjacent to the plaintiffs' land. They asked the plaintiffs to keep their building materials on their land and the plaintiffs agreed to allow use of their land for keeping the building materials. Thereafter the defendants/opposite parties approached the plaintiffs to make a chalaghar for keeping their building materials and the plaintiffs granted their prayer. But, ultimately the defendants/opposite parties did not remove their articles and the chalaghar. They constructed chalaghar on the plaintiffs' land at their own expenses.
5. The question of title is very much involved in the suit because the plaintiffs/petitioners have prayed for their declaration of their title in the suit and other reliefs. So, for the purpose of declaration of the title, the relevant R. S. record of rights might be very much relevant and for that purpose the plaintiffs/petitioners virtually wanted to adduce further evidence under the provisions of Order 41 Rule 27 of the C.P.C. The plaintiffs/petitioners have given justified reasons why they could not produce the said R. S. record of rights at the time of trial before the learned Civil Judge (Junior Division). Now, the R. S. record of rights is a public document and there is no chance of preparation of the document during pendency of the suit. Alternatively, it cannot be stated that this is a document manufactured by the plaintiffs during pendency of the trial. It is a public document. So, if the plaintiffs/petitioners are permitted to produce these documents at the stage of appeal, I think, justice would be done to settle the dispute between the parties once for all. Therefore, I am of the view that the learned appellate court was not justified in rejecting the prayer of the plaintiffs/petitioners under Order 41 Rule 27 of the C.P.C. on the ground that such R.S. record of rights was not produced earlier at the time of trial. In coming to such decision, I have considered the decision of [Mrutunjoy Lenka and Others Vs. Gagan Kishore Swain \(Dead\) and after him his L.Rs. and Others](#), and [Mehar Chand and Others Vs. Lachhmi and Others](#).
6. Therefore, I am of the view that the learned appellate court was not justified in rejecting the petition dated 12.03.2009 filed by the plaintiffs/petitioners. The said petition stands allowed. The learned appellate court shall proceed with the appeal from that stage.
7. The application is, therefore, allowed with the above orders.
8. Considering the circumstances, there will be no order as to costs.
9. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocate for the parties on their usual undertaking.