

CIVIL REVISION

Present: The Hon'ble Mr. Justice Tarun Kumar Gupta

Judgment on 25.08.2010

C. O. No.1283 of 2005

Sri Amaresh Chandra Pandey

Versus

The State of West Bengal & Ors.

Points:

Adducing evidence - Deletion of Order 18 Rule 17 A by the Amendment Act of 2002- Even after due diligence evidence could not be produced at the time of leading evidence- Whether the Court has power to produce evidence at a later stage- Code of Civil Procedure, 1908-O 18 R17A

Facts:

Defendants unverified application for production of documents after closure of their witness has been allowed by the trial Court against which the plaintiff preferred the revision.

Held:

Trial Court was satisfied with the fact that O.P. /defendant/State could not produce those documents at the time of evidence of D.W.1 in spite of due diligence and that those documents are required for proper adjudication of the suit. Court finds no infirmity in the aforesaid order of the learned Trial Court. Para 10 and 11

Court has the power to accept a petition even if it was not in proper form if learned Court is of the opinion that said petition should be entertained for ends of justice. Para 11

Cases cited:

(2009) 4 SCC page 410 (Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate); 2010 (1) CHN page 316 (Sahanaz Akhte v. Sk. Asfar Ali Hossain); Salem Advocate Bar Association Tamil Nadu's case which was reported in 2005 (2006) SCC page 344

For the petitioner: Mr. Probal Mukherjee, Mr. Sukanta Chakraborty

For the Opposite Parties: Mr. Rama Prosad Tarafdar, Ms. Nabanita Pal

Tarun Kumar Gupta, J.:-

Today Sri K. L. Samanta, Government pleader, files his memo of appearance in this case on behalf of O.P. /defendant Nos. 1 and 2 and let it be kept with the record.

2. This revisional application under Article 227 of the Constitution of India is directed against order No.62 dated 21.12.2004 passed by learned Civil Judge (Junior Division), 2nd Court, Asansol in Title Suit No.171 of 2000. By the impugned order learned Trial Court allowed the petition dated 07.12.2004 filed by the respondent Nos. 1 and 2 for admitting certain documents after closure of evidence of D.W.1.

3. Being aggrieved and dissatisfied with said order the instant revisional application has been filed by the petitioner / plaintiff alleging that plaintiff filed said Title Suit No.171 of 2000 praying for declaration of his title in suit property with a further declaration that R.S. record of right showing the predecessor in interest of defendant Nos. 3 to 8 as having permissive possession in the suit land was erroneous and baseless with a further prayer for permanent injunction against state authority being defendant Nos. 1 and 2 from settling the said land to any person.

4. The respondent /defendant State started to contest the said suit by filing written statement denying material allegations of the plaint and contending inter alia the suit plot was rightly recorded in favour of Gopal Chandra Nandi and others as intermediary under B.H. Roy and that said plot was vested and recorded in R.S. Khatian during R.S. operation and that the noting of R.S. Khatian recording permissive possession of some persons was correct etc.

5. It further appears that O.P. / defendant/ State filed a list of documents in the Trial Court in 07.12.2004 together with a petition for receiving those documents and evidence from the side of defendant/State on 21.12.2004. It further appears that in spite of submission of written objection dated 21.12.2004 by petitioner / plaintiff learned Trial Court allowed O.P./ defendant/State to produce those documents by recalling D.W.1. According to learned Court, D.W.1 deposed that the documents were lying in the office and that he would be able to file those documents if time was given, and that in spite of due diligence defendant/State could not produce those documents earlier and that those documents should be permitted to be produced under Order 18 Rule 17 A C. P. C. for proper adjudication of the case.

6. During hearing learned Advocate Mr. Probal Mukherjee for the petitioner / plaintiff has submitted that Order 18 Rule 17 A has since been deleted by Code of Civil Procedure Amendment Act of 2002 with effect from 1st July, 2002 and hence learned Trial Court has exercised jurisdiction which was not vested in him by law and the impugned order should be set aside by this Court of revision. It was further submitted that said petition of O.P./defendant/State was not also in proper form having no verification even.

7. In this connection learned Advocate for the petitioner / plaintiff has referred a case law reported in (2009) 4 SCC page 410 (Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate) wherein it was held that Order 18 Rule 17 was not intended to be used to fill up omissions of evidence of the witness who has already been examined, and that purpose of Order 18 Rule 17 was to enable Court to clarify any doubt that might have arisen during the course of examination of a witness.

8. I do not find any application of the aforesaid case law in this case. In the written statement filed by the O.P./defendant/State it was categorically stated that the suit plot was recorded in favour of Gopal Chandra Pandey and others under one intermediary and that the same was vested during R.S. operation and that khatian was correctly prepared showing proper notings. Now, O.P. /defendant/State has wanted to file concerned documents in support of said defence case already canvassed in W.S. So, it is not a case of producing documents belatedly to fill up any lacunae or omission in the evidence of any witness. As such said referred case law has no application in this case.

9. Sri K. L. Samanta, learned advocate for the O.P. /defendant /State has referred a case law reported in 2010 (1) CHN page 316 (Sahanaz Akhte v. Sk. Asfar Ali Hossain) to submit that in spite of deletion of Order 18 Rule 17 A by the Amendment Act of 2002, the Court has power to allow a party to produce evidence at a later stage being satisfied that even after due diligence said evidence could not be produced at the time of leading evidence by the party. In this connection, learned Single Bench has referred a famous decision of Hon'ble Apex Court in Salem Advocate Bar Association Tamil Nadu's case which was reported in 2005 (2006) SCC page 344.

10. I have already stated that learned Trial Court was satisfied with the fact that O.P. /defendant/State could not produce those documents at the time of evidence of D.W.1 in spite of due diligence and that those documents are required for proper adjudication of the suit.

11. I find no infirmity in the aforesaid order of the learned Trial Court. In this connection I further like to add that learned Court has the power to accept a petition even if it was not in proper form if learned Court is of the opinion that said petition should be entertained for ends of justice.

12. Accordingly, I find and hold that the impugned order does not call for any interference by this Court of revision exercising revisional powers under Article 227 of Constitution of India.

13. As a result, the revisional application stands dismissed.

14. The order of stay dated 08.06.2005 stands vacated.

15. Let a copy of the order be forwarded to learned Trial Court forthwith.

16. Urgent xerox certified copy be supplied to the Counsels of the party / parties, if applied for.

(Tarun Kumar Gupta, J.)

