Judgment Sheet

IN THE HIGH COURT OF SINDH KARACHI

THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Revision Application No. 145 of 2016

Applicant : Hamid Saleem Gore,
through Mr. Suresh Kumar Advocate.

Respondents 1 to 3 : (1) Province of Sindh, through Secretary Revenue / Senior Member Board of Revenue, Hyderabad, (2) Member Judicial Board of Revenue Hyderabad, and (3) Additional Commissioner-I, Hyderabad, through Mr. Allah Bachayo Soomro, AAG Sindh.

Respondent No.4 : Lt. Col. HQ M.F.R.O. Hyderabad Cantt, called absent.

Date of hearing : 06.12.2019.

J U D G M E N T

NADEEM AKHTAR, J. – Through this Civil Revision Application, the applicant has impugned order dated 11.05.2016 passed by learned District Judge Jamshoro at Kotri in Civil Appeal No.16/2013, whereby the application filed by him under Order XLI Rule 27 CPC for production of additional evidence in his above appeal was dismissed.

2. Relevant facts of the case are that F.C. Suit No.13/2008 was filed by the applicant against present respondents for declaration and permanent injunction. In his above Suit, a declaration was sought by him that he was the owner of the suit property and the orders passed by respondents 2 and 3 for cancellation of his ownership in respect thereof, were malafide, illegal and void. Consequential relief of injunction was also sought by him. Vide judgment and decree dated 31.01.2013 and 06.02.2013, respectively, his Suit was dismissed by the learned trial Court. Such dismissal was assailed by him through the above appeal wherein he filed an application under Order XLI Rule 27 CPC for production of three documents viz. attested copies of entries in the revenue record as additional evidence. The said application was dismissed by the learned appellate Court through the impugned order.

3. It was contended by learned counsel for the applicant that copies of the above mentioned documents / entries were filed by the applicant along with his plaint, but the originals or attested copies thereof could not be produced by him at the time of evidence as the same were not traceable at the relevant time ; and, as soon as attested copies were located, the above application was filed for production thereof before the learned appellate Court. On my query that when the originals and attested copies of the documents in question were not available, whether the applicant took any step before the learned trial Court for summoning the relevant record, learned counsel referred to the deposition of three official witnesses viz. (i) Mukhtiarkar Thana Bulla Khan, (ii) Senior Clerk, Mukhtiarkar

Thana Bulla Khan and (iii) Clerk, Deputy Commissioner Office, Taluka Qasimabad, District Hyderabad. The depositions of the above officials show that they had been summoned by the trial Court to produce documents from their record, and all of them had stated before the trial Court that the record was destroyed / burnt during the agitation / riots erupted after the incident of 27.12.2007.

4. Rule 27(1) of Order XLI of the Code of Civil Procedure, 1908, the scope whereof is limited, contemplates very few circumstances or conditions in which the appellate Court may allow a party to the appeal to produce additional oral or documentary evidence. Such circumstances / conditions are, (a) where the Court from whose decree the appeal is preferred had refused to admit evidence which ought to have been admitted, or (b) where the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or (c) for any other substantial cause. The language used in Rule 27 ibid clearly indicates that the first appellate Court could take additional evidence only if after examining the evidence produced by the parties it comes to the conclusion that the same was inherently defective or insufficient, and unless additional evidence was allowed, judgment cannot be pronounced ; and, only such additional evidence can be permitted to be brought on record at the appellate stage which is required by the appellate Court itself for final or conclusive adjudication in the matter, or for any other substantial cause. It follows that additional evidence can be allowed in appeal when on examining the record, as it stands, an inherent lacuna, defect or deficiency is not only apparent, but is also felt by the appellate Court. The sole criterion as to whether additional evidence should be allowed or not depends upon the question whether or not the appellate Court requires the evidence **"***to enable it to pronounce judgment or for any other substantial cause***"**, as to which the appellate Court is the sole judge as the need for additional evidence must be felt by the appellate Court itself. In such an event, the appellate Court may allow additional evidence either on an application by any of the parties or even *suo motu*. Thus, it can be safely concluded that the expression **"***to enable it to pronounce judgment***"** means to enable the appellate Court to pronounce a satisfactory and complete judgment ; it certainly does not mean that additional evidence should be admitted in appeal in order to enable the appellate Court to pronounce judgment in favour of a particular party ; and, the provisions of Rule 27 ibid can be legitimately invoked by allowing additional evidence only in cases where it is impossible for the appellate Court to pronounce judgment on the basis of the evidence available on record. These views expressed by me are fortified by (1) *Parshotim Thakur and others V/S Lal Mohar Thakur & others*, ***AIR 1931 Privy Council 143***, (2) *Mad Ajab and others V/S Awal Badshah*, ***1984 SCMR 440***, (3) *Muhammad Siddique V/S Abdul Khaliq and 28 others*, ***PLD 2000 SC (AJ&K) 20***, (4) *Taj Din V/S Jumma and 6 others*, ***PLD 1978 SC (AJ&K) 131***, (5) *Nazir Hussain V/S Muhammad Alam Khan and 3 others*, ***2000 YLR 2629 [SC (AJ&K)]***, (6) *Abdul Hameed and 14 others V/S Abdul Qayyum and 16 others*, ***1998 SCMR 671***, (7) *Nazir Ahmed and 3 others V/S Mushtaq Ahmed and another*, ***1988 SCMR 1653***, and (8) *Mst. Jewan Bibi and 2 others V/S Inayat Masih*, ***1996 SCMR 1430***.

5. In the present case, the applicant had prayed in his Suit for a declaration that he was the owner of the suit property and the orders passed by respondents 2 and 3 for

cancellation of his ownership in respect thereof, were malafide, illegal and void. It is a matter of record that the above mentioned officials were summoned by the trial Court to produce the original record of the suit property, which could not be produced as the same had been destroyed / burnt. Since the original record was admittedly in the custody of the above officials and it was their responsibility to maintain it, the applicant could not be held responsible if the original record could not be produced in the circumstances explained by the said officials. In this background, I am of the view that the material available before the learned appellate Court was not sufficient for pronouncing judgment as there was an inherent lacuna and deficiency therein, and as such learned appellate Court ought to have felt the need of additional evidence, especially when the applicant / plaintiff had come forward to assist the appellate Court with the prayer that he may be allowed to produce attested copies as additional evidence. I am also of the view that this was clearly not a case where the applicant was trying to fill up any lacuna in his case.

6. In view of the above discussion, the application filed by the applicant for production of additional evidence before the learned appellate Court is allowed. It is clarified that the burden to prove the genuineness and authenticity of the documents in question shall be on the applicant, and this aspect shall be decided by the learned appellate Court strictly in accordance with the parameters laid down in the Qanoon-e-Shahadat Order, 1984.

This civil revision application and listed application are allowed in the above terms with no order as to costs.

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J U D G E