

In the Court of Additional District Judge-III, Buxar

Title Appeal No-35/2012

Nilesh Kumar & others.....Appellants

Vs.

Phulbaso Kunwar & others....Respondent

05.12.2019

Pairvi filed on behalf of both sides.

Today record is put up for order on petition dated 17.09.2018 filed under Order XLI rule 27 C.P.C and Section 151 C.P.C. on behalf of respondent. Rejoinder has been filed on behalf of appellant on 16.11.2018. Both sides have been heard on 08.11.2019. In petition dated 17.09.2018 it has been contended that during the pendency of appeal appellant Anil Rai executed four sale deeds regarding disputed land bearing Khata no.142, Mauja-Barka Nuaon without permission of the court without any right and it is essential to admit those sale deeds as additional evidence under the provision of Order XLI rule 27 C.P.C. In rejoinder dated 16.11.2018 it has been contended that the alleged sale deeds are not anyway relevant for deciding the issue in controversy and the petition filed by the appellant is not maintainable.

Learned counsel for the respondent/petitioner submitted that the appellant executed several sale deeds dated 11.10.2017 without obtaining any permission from this court and the certified copies of sale deeds are public document and admitted documents of the appellant and the appellant never denied the existence of the same. He further submitted that father of appellant Anil Rai also executed sale deed of Khata no.142 and those sale deeds have marked in evidence in the trial court. He further submitted that the trial court dismissed the claim of the plaintiff/appellant and appellant/plaintiff lost their suit as well as they also their case in other executive and revenue court. He further submitted that during pendency of the appeal the order dated 30.05.2012 passed in Mutation Revision Case no. 115/2007-08 has been admitted as additional evidence vide order dated 05.07.2017. He further submitted that the Circle Officer, Buxar cancelled Jam Bandi vide order dated 30.12.2013 and rejected the petition of appellant Anil Rai on 11.01.2016 and both these order sheets are public document and it is essential to admit them as additional

evidence. Hence he prayed to allow the petition dated 17.09.2018 filed under Order XLI rule 27 Section 151 C.P.C.

On the other hand learned counsel for the appellant/plaintiff submitted that the petition filed by the respondent/defendant is not maintainable in the eye of law and Order XLI rule 27 never provides for admitting such type of document in evidence. He further submitted that the Circle Officer passed the order on the basis of order dated 04.09.2012 passed in CWJC no. 16228/2012 whereas CWJC. No.16228/2012 has already withdrawn vide order dated 02.05.2016 hence there is no justification of the order passed by Circle Officer.

Having heard the submission of the parties and from perusal of the record it is apparent that it is the case wherein the real controversy relates to the core issue that whether the plaintiff/appellants are legal heirs of Bhagwati Kuari or not. Order XLI rule 27 C.P.C. provides that an appellant shall not be entitled to produce additional evidence in the appellate court. But this power is subject to three exceptions-

- (a).If the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted,
- (aa).The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after exercise of due diligence be produced by him at the time when the decree appealed against was passed, and
- (b).The appellate court requires any documents to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

From considering all the aspects, this court is of the view that the documents filed by the respondent were not in existence at the time of passing of the impugned judgment against which the present Title Appeal has been preferred. The impugned judgment has been passed in Title Suit no. 101/1993 on 18.05.2012 and the documents filed by the respondents are of dated 08.05.2013 to 30.12.2013 and 11.01.2016 and 11.10.2017, hence the petition filed on behalf of respondent dated 17.09.2018 is hereby allowed to the extent that four sale deeds dated 11.10.2017 executed by appellant Anil Rai and order sheet of Circle Officer, Buxar dated 08.05.2013 to 30.12.2013 of Miscellaneous Case no. 02/2013-14 and order sheet dated 11.01.2016 to 30.01.2016 passed by Circle Officer,

Buxar in Mutation Case no. 3122/04185/2015-16 are hereby ordered to be kept on record and if this court requires the same to enable it to pronounce judgment, or for any other substantial cause at the time of hearing of the present Title Appeal the above noted documents will be admitted in evidence.

Put up on 31.01.2020 for argument. Appellant is directed to argue the case positively on the next date fixed.

Dictated

(Dhirendra Bahadur Singh)
Additional District Judge-III,

Buxar

05-12-2019