[2025] 8 S.C.R. 1174 : 2025 INSC 1027

Iqbal Ahmed (Dead) By Lrs. & Anr.
v.
Abdul Shukoor

(Civil Appeal No. 10458 of 2010)

22 August 2025

[Pamidighantam Sri Narasimha and Atul S. Chandurkar,* JJ.]

Issue for Consideration

Issue arose whether it is necessary for the appellate court to consider the pleadings of the parties before adjudicating the prayer made for leading additional evidence u/Ord. XLI r.27(1) CPC.

Headnotes†

Code of Civil Procedure, 1908 – Order XLI Rule 27(1) – Production of additional evidence in appellate court – Consideration of the pleadings of the parties before adjudicating the prayer made for leading additional evidence u/Ord. XLI r.27(1), by the appellate court – Requirement – Decree for specific performance of agreement granted by the trial court in favour of the appellant – Appeal by the respondent, and during pendency the respondent filed an application u/Ord. XLI r.27(1) seeking production of additional documentary evidence in support of the appeal – Appellate court reversed the decree after taking into consideration the additional evidence led by the respondent – Sustainability:

Held: Judgment passed by the High Court unsustainable in law – High Court considered the application u/Ord. XLI r.27(1) for leading additional evidence without examining as to whether the additional evidence sought to be led was supported by the pleadings of the respondent in the written statement while reversing the decree – Before undertaking the exercise of considering whether a party is entitled to lead additional evidence u/Ord. XLI r.27(1), it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be

* Author

brought on record – In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration – Thus, besides the requirements prescribed by Ord. XLI r.27(1) being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence – It is only thereafter on being satisfied that a case as contemplated by the provisions of Ord. XLI r.27(1) has been made out that such permission can be granted – In absence of such exercise being undertaken by the High Court, it committed an error in allowing the application moved by the respondent for leading additional evidence – Thus, the matter requires re-consideration by the High Court afresh – Judgment and order passed by the High Court set aside – Proceedings remanded to the High Court. [Paras 7-10]

Case Law Cited

Anil Rai v. State of Bihar **[2001] Supp. 1 SCR 298 : (2001) 7 SCC 318;** *Ratilal Jhaverbhai Parmar and Others v. State of Gujarat and Others,* **2024 INSC 801 : [2024] 10 SCR 2227;** *Bachhaj Nahar v. Nilima Mandal and Anr.* **[2008] 14 SCR 621 : AIR 2009 SC 1103;** *Union of India v. Ibrahim Uddin and Anr.* **[2012] 8 SCR 35 : (2012) 8 SCC 148 – referred to.**

List of Acts

Code of Civil Procedure, 1908; Evidence Act, 1872.

List of Keywords

Appellate court; Pleadings; Leading additional evidence; Production of Additional Evidence in Appellate Court; Decree for specific performance of agreement; House tax demand register; Encumbrance certificate; Certified copy of the sale deed and City Survey Endorsement; Remand of the matter.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10458 of 2010

From the Judgment and Order dated 30.12.2008 of the High Court of Karnataka at Bengaluru in RFA NO. 440 of 2000

Appearances for Parties

Advs. for the Appellants:
Raghavendra Sri Atsa, Sr. Adv., N.K. Verma, Ms. Anjana Chandrashekar.

Advs. for the Respondent:
Ms. Mahalakshmi Pavani, Sr. Adv., Mohammad Usman Siddiqui, Ms. Aisha Siddiqui, B.S. Randawa, Ms. Sakeen Quidwai, Mohammad Salman Siddiqui, Aman Anand, Ms. Prabisha Pradeep, Neeleshwar Pavani, Ms. Shaurya Mishra, Md. Farman.

Judgment / Order of the Supreme Court

Judgment

Atul S. Chandurkar, J.

1. The short issue involved in this Civil Appeal is whether it is necessary for the Appellate Court to consider the pleadings of the parties before adjudicating the prayer made for leading additional evidence under the provisions of Order XLI Rule 27(1) of the Code of Civil Procedure, 1908?

2. The appellants are the unsuccessful plaintiffs, who are aggrieved by the reversal of the decree for specific performance of agreement dated 20.02.1995, that was granted by the Trial Court. The Appellate Court has reversed the said decree after taking into consideration the additional evidence led by the respondent - defendant.

   2.1 It is the case of the appellants - plaintiffs that on 20.02.1995, the respondent - defendant entered into an agreement to sell his house property for a consideration of ₹10,67,000. An amount of ₹2,50,000 was paid on the date of the agreement, while further amount of ₹2,50,000 was paid on 30.03.1995. The agreement was to be completed within a period of one and a half years. As per the said agreement, if the defendant was not in a position to deliver vacant possession, the consideration payable was to be ₹8,67,000.

   2.2 The plaintiffs on 18.04.1996 issued a notice to the defendant calling upon him to execute the sale deed. There was no

response to this notice. Thereafter on 11.07.1996, a telegraphic notice was issued by the plaintiffs. The plaintiffs thereafter on 19.07.1996 filed the suit for specific performance of the agreement dated 20.02.1995.

2.3 In the plaint, it was pleaded by the plaintiffs that they had disposed of other immovable properties for purchasing the suit property, which they intended to use for their occupation. It was further pleaded that the plaintiffs were always ready and willing to perform their part of the agreement and that the balance consideration was available with them.

2.4 In the written statement filed by the defendant, the case set up by the plaintiffs was denied. According to the defendant, he had borrowed an amount of ₹1,00,000 for expansion of his business from the plaintiff No.1 and that on 18.02.1995, his signatures were obtained on blank stamp papers. While he admitted his signatures at two places on the stamp papers, he denied the other signatures. As regards the plaintiffs' case that they had sold their immovable properties for purchasing the suit property, the defendant stated that it was not within his knowledge that the plaintiffs had done so.

2.5 The plaintiff No.1 examined himself and two other witnesses. The defendant examined himself before the Trial Court. On consideration of the aforesaid evidence, the Trial Court held that the plaintiffs had proved that an agreement to sell dated 20.02.1995 was entered into by the defendant. It was further held that the plaintiffs had proved their readiness and willingness. The Trial Court exercised discretion in favour of the plaintiffs and after disbelieving the evidence led by the defendant, decreed the suit for specific performance on 19.02.2000.

2.6 The defendant being aggrieved by the aforesaid decree challenged the same by filing an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short "the Code"), During pendency of the appeal, an application under provisions of Order XLI Rule 27(1) of the Code was filed by the defendant. He sought to produce additional documentary

evidence in support of the appeal. The documents intended to be produced were:-

> "1. Certified copy of extract of the house tax demand register pertaining to House Property bearing No.13, Old. No. 29/30, E No. 6th Street, HKB Road, Bangalore 550 001.
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> 2. Certified copy of the Encumbrance Certificate pertaining to House Property bearing No.13, Old No.29/30, E No. 5th Street, HKB Road, Bangalore 550 001.
>
> 3. Certified copy of the sale deed dated 22nd day of October 1948. E No. 5th Street, HKB Road, Bangalore 550 001.
>
> 4. Certified copy of the City Survey Endorsement."

2.7 The application was opposed by the plaintiffs. The Division Bench of the High Court while considering the appeal proceeded to hold that in view of the pleadings in paragraph 9 of the plaint, wherein the plaintiffs had stated that they had sold the immovable properties for purchasing the suit property and that the defendant had subsequently got information that no such sale had taken place, it was necessary to permit additional evidence to be led. After considering the same, the High Court was of the view that the agreement dated 20.02.1995 was not proved and that the case set up by the plaintiffs was not true. On that basis, the High Court reversed the decree for specific performance and directed the defendant to return the amount of ₹1,00,000 borrowed by him from the plaintiff No.1.

3. Mr. Raghavendra Srivatsa, learned Senior Advocate for the appellants - plaintiffs submitted that the High Court was not justified in reversing the decree passed by the Trial Court. The plaintiffs had pleaded and proved their readiness and willingness to perform their part of the contract in accordance with the agreement dated 20.02.1995. The Trial Court after examining entire evidence on record, rightly held that the agreement dated 20.02.1995 had been duly proved and that the High Court erred in reversing this finding.

The defendant having admitted his signatures on the said agreement, it was not permissible for the High Court to have compared the signatures and thereafter take a different view from the one taken by the Trial Court. The additional evidence sought to be led by the defendant was accepted without granting any opportunity to the plaintiffs to counter the same. It was further submitted that there was considerable delay on the part of the High Court in delivering the impugned judgment, after the parties were heard and the judgment was reserved. Reliance in this regard was placed on the decisions in **Anil Rai Vs. State of Bihar, (2001) 7 SCC 318** and ***Ratilal Jhaverbhai Parmar and Others Vs. State of Gujarat and Others, 2024 INSC 801.*** It was thus submitted that the Appellate Court had erred in reversing the well-reasoned judgment of the Trial Court.

4. Per contra, Ms. Mahalakshmi Pavani, learned Senior Advocate for the respondent – defendant supported the impugned judgment. According to her, the High Court was justified in reversing the finding that the agreement dated 20.02.1995 had been proved. It was clear from the deposition of the defendant, who had accepted his signatures at three places but had denied the other signatures on the document dated 20.02.1995. The High Court was justified in undertaking the exercise of comparing the signatures in exercise of the power conferred by Section 73 of the Indian Evidence Act, 1872 (for short "the Act of 1872"). Since it came to the knowledge of the defendant that the plaintiffs had not sold any immovable property as pleaded by them, the application seeking permission to lead additional evidence under provisions of Order XLI Rule 27 of the Code had been moved by the defendant. The same was rightly allowed by the High Court and after considering the public documents obtained from the State authorities, the same were taken into consideration. Since the High Court had considered the entire evidence in the proper perspective, there was no reason to interfere with the impugned judgment. It was, thus, urged that the appeal was liable to be dismissed.

5. Having heard the learned Senior Advocates for the parties and having perused the documentary evidence on record, it would be first necessary to consider whether the High Court was justified in permitting the defendant to lead additional evidence in the appeal as this is the principal reason that the decree passed by the Trial

Court has been reversed by the High Court in view of the additional evidence brought on record by the defendant.

5.1 In paragraph 9 of the plaint, it was specifically pleaded by the plaintiffs that they had disposed of their valuable immovable properties in order to purchase the suit property, which they required for their bona fide use and occupation. In the written statement, the defendant in paragraph 11 stated that as regards the averments contained in paragraph 9 of the plaint, it was not within the knowledge of the defendant that the plaintiffs had sold their valuable immovable properties so as to invest the return of the same in purchasing the suit property.

5.2 The plaintiff No.1 in his deposition stated that since he wanted to purchase the suit property for his residence and he did not own any property in Bengaluru, he had sold a house one month prior to the date of the agreement of sale so as to make the payment to the defendant. In his cross-examination, he stated that about two months prior to 20.02.1995, he was authorised by the plaintiff No.2 to sell his property located at Benson Town. Some portion of that property was accordingly sold to Mr. R. Maqbool for ₹7 lakhs while the remaining portion was sold to Mr. Gulzar Ahamed for ₹2.5 lakhs. He further stated about the manner in which the proceeds from the sale were invested.

5.3 The Trial Court on the basis of the evidence of the plaintiff No.1 and other witnesses, as well as the evidence of the defendant, accepted the case of the plaintiffs and granted a decree for specific performance.

5.4 In the grounds raised by the defendant in the appeal filed before the High Court, a challenge was raised to the document dated 20.02.1995, by stating that it was not an agreement of sale, but that the said document had been executed by way of security since the defendant had obtained a loan of ₹1,00,000 from the plaintiff No.1.

5.5 As stated above, during pendency of the appeal before the High Court, the defendant filed the application under the provisions of Order XLI Rule 27(1)of the Code. The High Court was of

the view that in the light of the pleadings in paragraph 9 of the plaint as well as the evidence of the plaintiff No.1, the documents in the form of extracts of the house tax demand register, encumbrance certificate, certified copy of the sale deed and certified copy of the City Survey Endorsement were material documents that were required to be taken into consideration as additional evidence. It was further stated that being public documents, the same ought to be accepted under Section 74 of the Act of 1872, being maintained by the authorities in discharge of their duties in normal course. For these reasons, the High Court was of the view that it was not necessary to remand the proceedings to the Trial Court for recording additional evidence and that the said documents could be considered by it. The decree for specific performance was accordingly reversed and instead the defendant was directed to return an amount of ₹1,00,000 to the plaintiff No.1.

6. Considering the averments in paragraph 9 of the plaint and the response of the defendant to the said averments in paragraph 11 of the written statement, it is clear that while the plaintiffs asserted that they had sold the immovable properties located at Benson Town for arranging the funds to undertake the transaction, the defendant stated that he was unaware of this factual aspect.

7. In the application preferred under Order XLI Rule 27(1) of the Code, the defendant stated that he got the information that there was no such sale by the plaintiffs in the last week of June, 2000. After making inquiries in the office of the Sub-Registrar, he got such information and obtained certified copies of extracts of said documents. It can be seen that the High Court has proceeded to consider the application under provisions of Order XLI Rule 27(1) of the Code without examining as to whether the additional evidence sought to be led was supported by the pleadings of the defendant in the written statement.

8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed

to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led,would be of no consequence as it may not be permissible to take such evidence into consideration. Useful reference in this regard can be made to the decisions in **Bachhaj Nahar Vs. Nilima Mandal and Anr., AIR 2009 SC 1103** and **Union of India Vs. Ibrahim Uddin and Anr., (2012) 8 SCC 148.** Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.

9. As we have found that the application for leading additional evidence has been considered by the Appellate Court without examining the aspect as to whether the additional evidence proposed to be led was in consonance with the pleadings of the defendant and whether such case had been set up by him coupled with the fact that the additional evidence taken on record has weighed with it while reversing the decree, the matter requires re-consideration by the High Court. Since we find that the matter requires re-consideration at the hands of the High Court afresh, we have not gone into the aspect of delay in deciding the appeal by the High Court as was urged on behalf of the appellants.

10. For the aforesaid reasons, we find the judgment under challenge to be unsustainable in law. The appeal requires to be re-considered along with the application filed by the defendant under provisions of Order XLI Rule 27(1) of the Code afresh. Accordingly, the judgment and order dated 30.12.2008 passed in RFA No.440 of 2000 is set aside. The proceedings are remanded to the High Court to re-consider the same afresh in accordance with law. Since the suit was filed in 1997, we request the High Court to expedite the consideration of RFA No.440 of 2000. It is clarified that we have not expressed any opinion on the merits of the matter.

11. The Civil Appeal is allowed in the aforesaid terms, leaving the parties to bear their own costs.

12. Pending application(s), if any, also stand disposed of.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain