

BILLA JAGAN MOHAN REDDY AND ANR.

v.

BILLA SANJEEVA REDDY AND ORS.

JANUARY 28, 1994

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Code of Civil Procedure, 1908: Order XIII Rule 1—Order XLI Rule 27—Production of public documents—Not in the custody of party—Time taken in procuring certified copies—Delay in filing—Application for condonation of delay—Held: to be normally allowed in the interest of justice.

Certain lands were acquired under the Land Acquisition Act and the compensation was determined therefor. Appellants claimed 1/4 share in the compensation determined and the respondents objected. Collector made a reference under section 30 of the Land Acquisition Act. Appellants were the first party and Respondents were the second party in the said reference proceedings, which is pending.

The title of the appellants to claim compensation was based on the entries in record of rights, revenue records to show pre-existing title. The said documents were sought to be produced by an application for condonation of delay in the production of documents which were public documents and procuring certified copies of the same took time. The trial court dismissed the application. Revision application preferred before the High Court was also dismissed. Hence this appeal.

Allowing the appeal and setting aside the orders of the Courts below, this Court,

HELD: 1.1. It is clear from a bare reading of Order XIII Rule 1 that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The Court is enjoined under Sub-Rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in filing them. The explanation for delay is not as rigorous as one filed under

A s. 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the revenue authorities and sought to be produced. [431-H; 432-A, B]

B 1.2. No doubt there is a delay in production of the said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy, and when the Court felt that interest of justice required that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any and their relevance and effect be considered in deciding the issues which arose in the controversy. [432-B-D]

D 1.3. The trial court was not justified in refusing to condone the delay and to receive the documents. The delay in filing the documents is condoned. The trial Court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law. [432-D, E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2254 of 1994.

F From the Judgment and Order dated 5.7.1993 of the Andhra Pradesh High Court in C.R.P. No. 2805 of 1992.

D. Prakash Reddy and Mrs. Rani Chabra for the Appellants.

G The following Order of the Court was delivered:

H 1. The Office Report and also the affidavit of dasti service would prove that respondent Nos. 1, 3 and 4 have been served by usual mode and respondent Nos. 3, 5, 6 and 7 refused to receive notice even by dasti. Under these circumstances the service in the S.L.P. is complete. When the case was called, no one appeared for them, nor did they appear in person.

2. Leave granted Heard learned counsel for the appellants.

3. The appellants are the first party in the reference proceedings under s. 30 of the Land Acquisition Act which relates to an extent of Acre 33.09 gunthas of land in Chintagattu village, Warangal District, Andhra Pradesh, acquired due to submersion of Pochampadu Project. After determination of compensation, since the appellants claimed 1/4th share therein and was objected to by the 2nd party/respondents, the Collector made a reference under s. 30 and it is now pending a decision therein. The title of the appellants to claim compensation is based on the entries in the record of rights, revenue records to show pre-existing title. They sought to prove it by filing copies of family holdings, khasra Pahnin and Pahnri Patrikas for the year 1954-55 and Certified Copy of Pahani from M.R.O. Hasanparthy of S. Nos. 22A, 48, 55, 56, 57/C, 58/B, 58/C for the year 1959-60 to 1969-70 and other documents. The documents were sought to be produced by an application for condonation of delay in their production under Order 13, Rule (12) of C.P.C. These documents are public documents. The subordinate Judge dismissed the same. On revision, the High Court dismissed the C.R.P. No. 2805/92 by order dated 5.7.1993. Thus this appeal by special leave.

Order XIII Rule 1 provides thus:

"1. Documentary evidence to be produced at or before settlement of issues -

(1) The parties or their pleaders shall produce, at or before the settlement of issues, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced;

Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs."

It is clear from its bare reading that the parties or their counsel shall be required to produce all the documentary evidence in their possession or power which they intend to rely on to establish their right along with pleadings or before settlement of the issues. The Court is enjoined under

A sub-Rule (2) to receive such documents provided they are accompanied by an accurate list thereof prepared in the prescribed form. If they are not in the party's possession or custody, it shall be filed by the party along with an application to condone the delay in the filing them. The explanation for delay is not as rigorous as one filed under s. 5 of the Limitation Act. These documents were not in the possession or custody of the appellants, but they have obtained certified copies from the revenue authorities and sought to be produced. It is undoubted that there is a delay in production of the said documents. But the trial court had stated that the application was filed at the stage of arguments, seeking to produce those documents and sought to rely upon the documents. It is settled law that, if the documents are found to be relevant to decide the real issue in the controversy. And when the Court felt that interest of justice requires that the documents may be received, exercising the power under Order 41, Rule 27 C.P.C. the appellate court would receive the documents and consider their effect thereof. When such is the position, when the documents are sought to be produced in the trial court, before the arguments are completed, normally they may be received; an opportunity given to prove them and rebuttal if any their relevance and effect may have, be considered in deciding the issues arose in the controversy. Under these circumstances, the trial court was not justified in refusing to condone the delay and to receive the documents. The High Court also committed the same error in not considering the effect in this behalf in the right perspective. The orders are accordingly set aside and the delay in filing the documents is condoned. The Trial Court is directed to receive the documents, give an opportunity to the parties to prove the documents and if necessary, opportunity to the respondent to rebut the same and then dispose of the reference according to law.

F The appeal is accordingly allowed. No costs.

G.N.

Appeal allowed.