

T.A.29 of 12.

3.7.13. This appeal is posted for order on the petition No.1019/13 dtd.30.4.13 filed U/O.XLI, R.27(l) (b) of C.P.C, by the appellant.

By this petition, the petitioner-appellant has prayed to allow him to examine the Revenue Circle Officer of Teok. The appellant has stated that he had lost the original patta and the sale deed of the suit land and due to which, he could not trace out the said documents of the suit land. The appellant has further stated that the Revenue Circle Officer, Teok is an important witness to enable the Court to give proper and correct decision on the question in dispute. The appellant have also submitted that he would be prejudiced if he is not allowed to examine the said witness with records.

The respondent has not filed any objection to the said petition.

I have heard the submission advanced by the Ld.counsel for the appellant. Also perused the impugned Judgment and decree. On examination of record of the Ld.Court below, I find that the appellant has never brought before the matter of allowing him to examine the Circle officer.

Rule 27 of Order 41 of C.P.C has empowered the Appellate Court to allow the parties to produce the additional evidence, whether oral or documentary, but on following grounds-

***(a) The Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or***

***(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 the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or) and power Under Sub Rule 1(b) of Rule 27 of***

***C.P.C, can be exercised by the Appellate court if after hearing the parties on merit in appeal it finds it difficult to render effective judgment in absence of some documents.***

Appellant has filed this petition U/O.XLI, R.27, (I)(b) of C.P.C. This power can be exercised if circumstances falling under Clause(a) or Clause (aa) of Order XLI, R.27(1) are present. But, in the present case, circumstances of Clause (a) and Clause (aa) are not available. As such, before commencement of hearing of appeal, I am not inclined to exercise the power U/O.XLI, R.27(I)(b) of C.P.C. However, it is opened that if this power will be exercised in appeal, the Court find it difficult to render effective Judgment in absence of such evidence. Hence, this petition is rejected. Fixing 31.7.13 for final hearing of the appeal.

Civil Judge,Jorhat.