APPELLATE CIVIL

Before Inder Dev Dua, J.

GURBACHAN SINGH,—*Appellant.*

versus

ICHHAR SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1749 of 1960.

1964

November, 6th

Code of Civil Proceedure (Act V of 1908) — Order 41, Rule 27 — Appellate Court — When entitled to allow additional evidence to be produced — Doctrine of ejusdem generis *— Whether can be called in aid for construing the words "for any other substantial cause" — Doctrine of* ejusdem generis *— Meaning, nature and application of.*

Held, that the expression '*ejusdem generis*' means "of the same kind" and the doctrine of *ejusdem generis* is of ancient vintage. According to it when general words follow particular and specific words in an enumeration describing the legal subject, the general words are intended to embrace only subjects of the same species as are enumerated by the preceding specific words; the enumeration by specific words of course must not be exhaustive. The principle underlying this doctrine is designed to reconcile an incompatibility between specific and general words in view of other rules of construction, e.g., all words in a statute have, if possible, to be given due effect, the legislature does

not use superfluous words and all parts of a statute are to be construed together. It is thus really a question of assumed intention of statute. The rule of *ejusdem generis* is accordingly not a rule of law, but merely a rule of construction, often useful and convenient. Its application is thus presumptive and not peremptory. It does not operate automatically but is attracted only in case of some repugnancy or incompatibility between the specific and the general expressions. In order to attract this doctrine it may safely be said to be necessary that—

(i) the statute contains an enumeration of specific words which constitute a class;

(ii) the said class is not exhausted by the enumeration;

(iii) the general words follow the specific words; and

(iv) the legislative intention is not clearly manifest in favour of according broader meaning to the general words.

There should be a particular description of objects sufficient to identify what was intended, followed by some general or 'omnibus' description so as to facilitate the assumption that the latter is intended to be confined to the objects of the same class or kind as the former. Since the class of enumeration may often be an artificial creation, the rule of *ejusdem generis* is at times described to be a dangerous yard-stick to measure the legislative intent with. It is, therefore, to be applied with caution lest it is pushed too far.

Held, that in Order 41, Rule 27(1) (b) of the Code of Civil Procedure there is no such enumeration of specific objects with the result that there is scarcely any occasion to attract the rule of *ejusdem generis* for interpreting the general expression "for any other substantial cause." The statutory intention, however, appears to be clear that it is the requirement of the appellate Court to enable it to pronounce judgement or for any other substantial cause that the additional evidence can be allowed to be produced. The matter appears to be dependent on the discretion of the appellate Court, albeit, judicial discretion. If there is no error of law, then the Court of second appeal would, ordinarily speaking, not be entitled to reverse the exercise of discretion by the Court below. One main factor which the Court of appeal has also to determine when considering the question of production of additional evidence is that as a general principle additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at a proper stage and to fill in gaps. The expression "to enable it to pronounce judgment" has no fixed import and its application would depend on individual judicial approach, for it means ability to pronounce a judgment satisfactory to the mind of the Court delivering it. The expression "for any other substantial cause" occurring

in rule 27(1) (b) really means that if the appellate Court conscientiously requires interests of justice to be promoted by the production of additional evidence keeping in view the interests of the contesting parties, then it would be permissible to allow additional evidence.

Regular Second Appeal from the decree of the Court of Shri Sewa Singh, District Judge, Jullundur, dated the 16th day of July, 1960, affirming with costs that of Shri K. D. Mohan, Sub-Judge, 1st Class, Nakodar, dated the 25th January, 1960, dismissing the plaintiff's suit with costs and further ordering that the name of Surain Singh defendant No. 4 would be struck off the record.

D. N. AWASTHY, ADVOCATE, for the Appellant.

VED PARKASH KAKRIA, ADVOCATE, for the Respondents.

JUDGMENT

Dua, J. DUA, J.— This regular second appeal is directed against the order of the learned District Judge, Jullundur, affirming the judgment and decree of the learned Sub-Judge Ist Class, dismissing the plaintiff-appellant's suit for possession by inheritance of the land in question. It is not necessary to state in detail all the facts in controversy. Suffice it to say that the learned counsel for the appellant has very frankly conceded that without admitting the additional evidence which he seeks to adduce under Order 41, Rule 27, Civil Procedure Code, it is not possible for him to assail the findings of fact arrived at by the learned lower appellate Court.

To appreciate the question relating to the admission of additional evidence, it may be observed that the two pedigree-tables, reproduced in the judgment of the learned District Judge show Sewa Singh and Dana as the respective heads of families represented by these pedigree-tables. The simple question on which depends the fate of controversy is whether or not these two persons Sewa Singh and Dana were real brothers. The Courts below have found that they were real brothers and on this basis the plaintiff's claim to succession has been negatived and that of the defendants upheld.

Mr. D. N. Awasthy, learned counsel for the appellant, has produced a certified copy of translation of an extract from *khasra khana shumari* relating to Mauza Sandhawala, Pargana Nakodar, District Jullundur, prepared during the regular settlement of 1849-50, maintained in the Sadar (District) Revenue Office, Jullundur District. In the foot-note in this document one Sewa is described to be son of Himmat and one Dana is described to be son of Sahon. From this it is sought to be inferred that Sewa and Dana mentioned above were not real brothers and that the conclusion to the contrary of the learned District Judge and also that of the trial Court is erroneous.

Now an attempt was also made before the learned District Judge to adduce additional evidence but the same was disallowed with the following observations:—

> "Counsel for the appellant has made an application under Order 41, Rule 27, C.P.C., for production of additional evidence such as copies of entries from the register of Naqasi, 1851, relating to the ownership of Dana and Sewa, but I do not find any good ground for allowing additional evidence at this stage. The appellant had full opportunity of producing the evidence in the trial Court and he himself had closed his case there. The application made by the appellant's counsel is accordingly rejected."

The appellant's learned counsel has placed considerable reliance on a recent decision of the Supreme Court in *K. Venkataramiah* v. *A Seetharama Reddy and others* (1), for the proposition that the appellate Court's power to admit additional evidence has by virtue of this decision been widened than was previously supposed under the decision of the Privy Council in *Parsotim Thakur and others* v. *Lal Mohar Thakur and others* (2). According to the learned counsel for the appellant, the Supreme Court decision has given broader effect to the expression "for any other substantial cause" occurring in Order 41, Rule 27(1) (b). This expression, so argues Mr. Awasthy, should not now be construed

(1) A.I.R. 1963 S.C. 1526.
(2) A.I.R. 1931 P. C. 143.

Gurbachan Singh
v.
Ichhar Singh and others

Dua, J.

as *ejusdem generis* to the reasons which precede this expression in this clause. The matter has been dealt with in the Supreme Court decision in the following words:—

> "In view of what the High Court has stated in this passage it is not possible to say that the High Court made the order for admission of additional evidence without applying its mind. It seems clear that the High Court thought, on a consideration of the evidence, in the light of the arguments that had been addressed already before it that it would assist them to arrive at the truth on the question of Seetharam Reddy's age if the entries in the admission registers of the school were made available. It was vehemently urged by the learned counsel for the appellant that there was such a volume of evidence before the High Court that it could not be seriously suggested that the High Court required any additional evidence to enable it to pronounce judgment." The requirement, it has to be remembered, was the requirement of the High Court, and it will not be right for us to examine the evidence to find out whether we would have required such additional evidence to enable 'us' to pronounce judgment. Apart from this, it is well to remember that the appellate Court has the power to allow additional evidence not only if it requires such evidence to enable it to pronounce judgment' but also for 'any other substantial cause.' There may well be cases where even though the Court finds that it is able to pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence to 'enable it to pronounce judgment,' it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence 'for any other substantial cause' under R. 27(1) (b) of the Code."

Reference has also been made by the appellant's counsel to *Nagina Singh* v. *Ramjanam Singh* (3), *and to Sreenath Roy Raja* v. *Secretary of State* (4), but both of these decisions do not seem to me to advance the appellant's case.

So far as the argument relating to the doctrine of *ejusdem generis* is concerned, I agree that this doctrine cannot be appropriately called in aid in construing Order 41, Rule 27(1) (b), Civil Procedure Code, but I am taking this view on the language of this provision of law. The expression '*ejusdem generis*' means "of the same kind" and the doctrine of *ejusdem generis* is of ancient vintage. According to it when general words follow particular and specific words in an enumeration describing the legal subject, the general words are intended to embrace only objects of the same species as are enumerated by the preceding specific words; the enumeration by specific words of course must not be exhaustive. The principle underlying this doctrine is designed to reconcile an incompatibility between specific and general words in view of other rules of construction, e.g., all words in a statute have, if possible, to be given due effect, the legislature does not use superfluous words and all parts of a statute are to be construed together. It is thus really a question of assumed intention of statute. The rule of *ejusdem generis* is accordingly not a rule of law, but merely a rule of construction, often useful and convenient. Its application is thus presumptive and not peremptory. It does not operate automatically but is attracted only in case of some repugnancy or incompatibility beween the specific and the general expression. In order to attract this doctrine it may safely be said to be necessary that—

(i) the statute contains an enumeration of specific words which constitute a class;

(ii) the said class is not exhausted by the enumeration;

(iii) the general words follow the specific words; and

(3) A.I.R. 1928 Pat. 64.
(4) A.I.R. 1923 Cal. 233.

Gurbachan Singh
v.
Ichhar Singh and others

Dua, J.

(iv) the legislative intention is not clearly manifest in favour of according broader meaning to the general words.

There should, in my opinion, be a particular description of objects sufficient to identify what was intended, followed by some general or 'omnibus' description so as to facilitate the assumption that the latter is intended to be confined to the objects of the same class or kind as the former. Since the class of enumeration may often be an artificial creation, the rule of *ejusdem generis* is at times described to be a dangerous yard-stick to measure the legislative intent with. It is, therefore, to be applied with caution lest it is pushed too far.

In view of the foregoing observations I find that in Order 41, Rule 27(1) (b), there is no such enumeration of specific objects with the result that there is scarcely any occasion to attract the rule of *ejusdem generis* for interpreting the general expression "for any other substantial cause." The statutory intention, however, appears to me to be clear that it is the requirement of the appellate Court to enable it to pronounce judgment or for any other substantial cause that the additional evidence can be allowed to be produced. The matter appears to be dependent on the discretion of the appellate Court, albeit, judicial discretion. If there is no error of law, then the Court of second appeal would, ordinarily speaking, not be entitled to reverse the exercise of discretion by the Court below. One main factor which the Court of appeal has also to determine when considering the question of production of additional evidence is that as a general principle additional evidence should not be permitted at the appellate stage in order to enable one of the parties to remove certain lacunae in presenting its case at a proper stage and to fill in gaps. It is true that the expression "to enable it to pronounce judgment" has no fixed import and its application would depend on individual judicial approach, for it seems to me to mean ability to pronounce a judgment satisfactory to the mind of the Court delivering it. The expression "for any other substantial cause" occurring in rule 27(1) (b) on a consideration of all the relevant factors that I can think of really means that if the appellate Court conscientiously requires interests of justice to be

promoted by the production of additional evidence keeping in view the interests of the contesting parties, then it would be permissible to allow additional evidence. On this view the matter would really depend on the facts and circumstances of each case and no rigid test applicable to all cases can be formulated.

In the present case the document sought to be produced is not conclusive and indeed to allow it to be produced now would necessarily mean reopening the whole case, because the respondents might well claim an opportunity for rebutting the additional evidence. The contention that it is not possible for the respondents to lead any evidence in rebuttal is amply met by the argument that even the additional evidence leaves it to the Court to draw an inference from all the facts and circumstances and the inference of facts already drawn by the Court below can by no means as a matter of law be considered to be erroneous even with the additional evidence being on the record. On this premise to admit additional evidence in this case would virtually amount to affording to the appellant another chance of trying to convince the Court to give a decision in his favour. This would, in my opinion, not promote the true ends of justice, particularly when no convincing or cogent reason has been advanced as to why this document could not have been produced in the Court of first instance at the proper stage. The decision on the question of fact sought to be assailed was founded in the Court of first instance on the examination of the original pedigree-table and the location of the three relevant squares therein showing Dana, Sewa and their father. This decision cannot easily be assailed by the mere production of a certified copy of the *khasra khana shumari* sought to be produced on appeal on behalf of the appellant. Indeed the production of this document would, if anything, merely add to the confusion without clarifying the situation. I am, therefore, unable to hold that the lower appellate Court has erroneously disallowed additional evidence.

For the foregoing reasons this appeal fails and is hereby dismissed, but without costs.

R.S.