

Neutral Citation No. - 2024:AHC-LKO:42833

AFR

Court No. - 3

(Reserved)

Case :- SECOND APPEAL No. - 135 of 1998

Appellant :- Raja Ram

Respondent :- Ram Asrey

Counsel for Appellant :- Nirmal Tewari, Ambika Prasad, Deepak Tewari, Deepak Tiwari

Counsel for Respondent :- P.C. Agarwal, R.C. Gupta

Hon'ble Rajnish Kumar, J.

1. Heard, Sri Ambika Prasad, learned counsel for the defendant-appellant and Sri Rajesh Tiwari, Advocate holding brief of Sri P.C. Agarwal, learned counsel for the plaintiff-respondents.

2. This second appeal has been filed for setting aside the judgment and decree dated 15.12.1997 passed by Judge, Small Causes, Sitapur in Civil Appeal No.186 of 1988; Jagdeo Singh and Others Vs. Raja Ram dismissing the Regular Suit No.174 of 1984; Ram Asrey and Others Vs. Raja Ram and for maintaining the judgment and decree of the trial court dated 31.10.1988.

3. The following substantial question of law has been formulated in this second appeal.

"Whether the judgment passed by the first appellate court is perverse and illegal."

4. Learned counsel for the defendant-appellant submitted that no evidence could have been adduced in regard to the correction deed made during pendency of appeal and sale deed executed by Manno Devi in favour of Ram Chandra, minor son of Babu Lal and sale deed executed by him to Chhote Lal and Smt. Lalti Devi without amendment in the plaint and the same could not have been considered and no presumption also could have been drawn in regard to registered sale deed executed by Smt. Manno Devi and Ram Sundar in

the years 1970 and 1973. He also submitted that the sale deed by Chhote Lal was not executed by him on his behalf and the correction deed executed by him could not have been considered in absence of pleadings. He further submitted that plaintiff-respondents appeared in evidence as PW-2 in place of PW-1 in violation of Order-18, Rule-3 (A) of Civil Procedure Code, 1908 (here-in-after referred as CPC) but the first appellate court has failed to consider it. He further submitted that the possession of defendant-appellant was proved and the evidence of PW-1 and PW-2 was contradictory in regard to plinth and wall, which is against the plaintiff-respondents, whose possession was not proved on account of thatch of Raja Ram in east and west of his house and the land in dispute after his thatch on the east. He further submitted that the suit for injunction without prayer for declaration was not maintainable but the first appellate court has failed to consider the same and allowed the appeal without considering the pleadings, evidence and material on record, therefore the pleadings recorded by the first appellate court are perverse and illegal, thus not sustainable in the eyes of law and liable to be set-aside.

5. Learned counsel for the defendant-appellant relied on **Kalyan Singh Chouhan Vs. C.P. Joshi; (2011) 11 SCC 786, Biraji @ Brijraji and Another and Another Vs. Surya Pratap and Others; (2020) 10 SCC 729, Khudawand Haiyal Qaiyoom Vs. Sabir; 2007 68 ALR 210, Ayyasami Gounder and Others Vs. T.S. Palanisami Gounder; AIR 1996 Madras 237, Marappa Gounder and Others. Vs. Sellappa Gounder And Others; AIR 1985 Madras 183, A. Andisamy Chettiar Vs. A. Subburaj Chettiar; (2015) 17 SCC 713 and Srinivas Raghavendraro Desai (D) by LRS. Vs. V. Kumar Vamanrao @ Alok and Others; 2024 SCC OnLine SC 226.**

6. Learned counsel for the plaintiff-respondents submitted that the suit for permanent injunction was rightly and in accordance with law was filed and there was no need of prayer for declaration. There was

no substantial denial of title and there was only a colourable denial of title. The objection in regard to prayer for declaration had not been taken before the court's below. The sale deed in question on the basis of which the plaintiff-respondents are owner have also not been challenged and all the sale deeds are intact. Even otherwise the earlier sale deeds of the land in dispute have also not been challenged. He further submitted that no perversity or illegality in appellate court's order could be shown. He further submitted that when the aforesaid two sale deeds were filed, the opportunity was granted on 26.08.1986 for rebuttal but there was no rebuttal, therefore the objection in this regard is not sustainable in the eyes of law. He further submitted that the evidence was rightly adduced in accordance with law because the case was being got adjourned repeatedly by the defendant-appellant and on account of repeated adjournments witnesses had to return, therefore the objection of violation of Order-18, Rule 3 (A) is not sustainable. Even otherwise no prejudice could be shown. The executor of the sale deed appeared as PW-1 and stated that the sale deed was executed by him on his behalf and as power of attorney holder of Smt. Lalti Devi. He further submitted that the correction deed was executed at the appellate stage and the same was filed, which was taken on record with cost, which was accepted but there was no rebuttal despite opportunity and time granted or challenge to the same. He further submitted that the evidence of the plaintiff-respondents was declined to be considered on the ground of their age, whereas the evidence of defendant-appellant was considered in similar circumstances by the trial court which could not have been done and the same has rightly been considered by the first appellate court in accordance with law.

7. On the basis of above, submission of learned counsel for the plaintiff-respondents is that the first appellate court has rightly and in accordance with law allowed the appeal and set-aside the judgment

and decree passed by the trial court and decreed the suit filed by the plaintiff-respondents of permanent injunction by means of the impugned judgment and decree, which does not suffer from any perversity, illegality or error. The appeal has been filed on misconceived and baseless grounds. The substantial question of law formulated in the appeal does not arise, therefore the appeal is liable to be dismissed with cost.

8. Learned counsel for the plaintiff-respondents relied on **Ram Jas And Others Vs. Surendra Nath and Another; AIR 1980 All 385, Smt. Sushila Devi Vs. Smt. Jasoda Bai and Others; 1981 All L.J. 263, Ved Prakash Rastogi Vs. Nagar Palika Badaun; AIR 2008 All 27, Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam represented by its Trustees and Others Vs. G.K. Kannan and Others; 2020 SCC OnLine Mad 28257, Judgement and Order dated 23.05.2019 passed in K. Mahalakshmi Vs. B. Yamuna; Second Appeal No.232 of 2013 and M.P. Nos.1 of 2013 by High Court of Madras, C. Sesha Reddy Vs. T. Basavana Goud; AIR 2003 Karnataka 335, Judgment and Order dated 18.08.2016 passed in Vivek Kumar Vs. Dinesh Chandra Azad; Civil Misc. Jurisdiction No.597 of 2016 by High Court of Judicature at Patna, Pravesh Kumari and Others Vs. Rishi Prasad And Others; AIR 1986 Patna 315, Swami Hari Harananda Giri Vs. Yogoda Satsangha Society of India and Others; AIR 1991 Orissa 75 and Maguni Dei Vs. Gouranga Sahu And Others; AIR 1978 Orissa 228.**

9. I have considered the submissions of learned counsel for the parties and perused the records.

10. The plaintiff-respondents filed suit for mandatory injunction for a direction to the defendant-appellant not to interfere in his possession and raising construction on plot in question. The suit was filed

alleging therein that the plaintiff-respondents are owner and in possession of the plot which is 25 ft. east to west and 45 ft. north to south. The said plot was purchased by the plaintiff-respondents from the general power of attorney holder of Smt. Lalti Devi namely Chhote Lal through registered sale deed dated 31.10.1979 and since then they are in possession. The defendant- appellant has no concern with the land in dispute. The defendant-appellant was not permitting the plaintiff-respondents to raise construction and adamant to quarrel.

11. The suit was contested by the defendant-appellant by filing written statement denying the allegations made in the plaint. It was specifically stated in the written statement that the plaintiff-respondents are not in possession of the land in dispute since the statutory period of limitation, as such suit for permanent injunction is not maintainable and liable to be dismissed. It was further averred that the defendant-appellant is the owner of the plot in dispute as well as in possession over it since the time of his ancestors. It was further alleged that Smt. Lalti Devi was neither owner of the plot in question nor has any concern with it and Chhote Lal is not his power of attorney holder. It has further been alleged that the land in dispute is being used as courtyard and Sahan by the defendant-appellant and the opening of the house of the defendant-appellant and his brothers is on it and there are masonry wall and foundation made by the defendant-appellant and masonry construction is in existence. It has further been alleged that since the defendant-appellant is in possession, therefore the suit for injunction is not maintainable. Smt. Lalti Devi was neither the owner as alleged by the plaintiff-respondents nor Chhote Lal his agent and attorney and the owner of the land in dispute was Devi Deen; real uncle of the defendant-appellant, who was in possession over it during his life time and after his death defendant-appellant is continuing to be in possession. Hence the suit is not maintainable and liable to be dismissed.

12. On the basis of pleadings of the parties, five issues were framed by the trial court. The issue no.1 was as to whether the plaintiffs are owner and in possession of the land in dispute described in the plaint. Issue no.2 was regarding insufficiency of valuation and court fees. Issue no.3 was as to whether the suit is bad for non joinder of necessary parties and liable to be dismissed. Issue no.4 was as to whether the suit was time barred and the last and the fifth issue was as to whether entitled for any relief. The plaintiff-respondents filed a copy of the sale deed dated 31.10.1979 and the correction deed executed by Chhote Lal during pendency of appeal before appellate court and taken on record under Order-41, Rule-27 and also certified copies of two sale deeds to establish the title of Smt. Lalti Devi and Chhote Lal, who executed sale deed in favour of plaintiff-respondents. In oral evidence Chhote Lal appeared as PW-1, Ram Asrey as PW-2, Changa as PW-3 and Jarakhan as PW-4. The defendant- appellant, in support of his claim filed seven documents. The defendant-appellant appeared himself as DW-1 and produced Radhey Lal as DW-2 in oral evidence. After evidence and considering the same, suit was dismissed by the sixth Additional Munsif, Sitapur by means of the judgment and decree dated 31.10.1988. Being aggrieved by the said judgment and decree, the plaintiff-respondents preferred civil appeal, which has been allowed by means of the impugned judgment and decree dated 17.12.1997 passed by the Judge, Small Causes, Sitapur. Hence the instant second appeal has been filed.

13. A plea has been raised that the plaintiff-respondent no.1 had appeared as PW-2 in place of PW-1 in violation of Order-18, Rule-3(A). The Order-18, Rule-3(A) provides that where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage. Therefore, if a party wishes to appear as a witness he may

appear before any other witness is examined on his behalf and if he, for any reason does not appear before any other witness is examined on his behalf, he may seek permission of the court to appear at a later stage, which can be allowed by the court for the reasons to be recorded. The provision does not provide any consequence of violation of rule. Even otherwise if the party wishes to appear subsequently or does not appear before other witnesses on his behalf are examined, he can be examined and the concerned court can permit him, Therefore it can not be said that the party, if chooses to appear in evidence, has to appear mandatorily before other witnesses on his behalf are examined.

14. The High Court of Madras, in the case of **Ayyasami Gounder and Others Vs. T.S. Palanisami Gounder (Supra)**, has held that the object behind the introduction of Order-XVIII, R.3-A of the Code is to put an end to the mal-practices indulged in by the litigants in examining other witnesses first and later covering up the gaps and lacunae in such evidence, by the examination of the parties themselves later, to substantiate the case. Therefore, in cases where the party desires to examine himself at a later stage, he should prior to the commencement of the evidence on his side, make an application in that behalf before the court for such later examination. Otherwise, Order-XVIII. R.3-A of the Code will be honoured more in its breach, rather than in its observance.

15. The High Court of Madras, in the case of **Marappa Gounder and Others. Vs. Sellappa Gounder And Others (Supra)**, held that when the rule contemplates permission to be granted by Court for a party to a proceeding to be examined at a later stage, it is indicative that there is no total ban against parties being examined after their witnesses are put in the witness box. It has further been held that in such of those cases wherein without prior permission witnesses of the party had been examined, and later on the party wishes to appear as a

witness, the Court is duty bound to find out, whether on the party being examined at that stage, it would result in filling up any blanks or lacunae left out in the evidence already given, and whether wantonly he avoided the witness box with ulterior motives, and whether he was placed in such a situation or circumstances which had disabled him from being examined earlier etc. Unless compelling strong circumstances which are relevant germane had existed, permission to a party to a proceeding to examine himself after his witnesses had been examined, ought not to be granted.

16. The High Court of Madras, in the case of **K. Mahalakshmi Vs. B.Yamuna (Supra)**, has held that if the objection in regard to Order-XVIII, Rule-3(A) of C.P.C. had not been taken, it can not be taken for the first time in the second appeal.

17. The Karnataka High Court, in the case of **C. Sessa Reddy Vs. T. Basavana Goud (Supra)**, has held that a close reading of the provisions of Rule 3A indicates that the insistence of examination of a party as a first witness is not an inviolable rule and the rule itself provided an exception.

18. The High Court of Patna, relying on a Division Bench case of **Pravesh Kumari and others Vs. Rishi Prasad and Others, A.I.R. 1986 Patna 315 (Supra)** in the case of **Vivek Kumar Vs. Dinesh Chandra Azad (Supra)**, has held that Order 18 Rule 3A is directory and not mandatory. But that does not mean that Rule 3A need not be observed. It must be observed. But its non-observance in all cases should not lead to the extreme penalty of expunging the evidence which had already been recorded. Therefore, where the plaintiff without obtaining leave of the court under Rule 3A was examined as a witness at a later stage after the witnesses on his behalf had already been examined and deposed in support of his case and proved number

of documents, his evidence along with the exhibits which he had proved should not be expunged for non-observance.

19. A Division Bench of Orisa High Court, in the case of **Maguni Dei Vs. Gouranga Sahu (Supra)**, has held that the provisions of Order 18, Rule 3-A is couched in affirmative terms. It prescribes a certain procedure but imposes no penalty for its non-observance and the rule itself provides an exception and gives discretion to the court to permit the examination of a party at the later stage for reasons to be recorded by it. It has further been held that in interpreting a Code of Procedure, it would be useful to keep in mind that the rules of procedure are intended to aid the administration of justice and not to hamper it. They should be used as aids rather than as obstacles. The relevant paragraph 10 to 12 are extracted here-in-below:-

"10. A directory provision is generally affirmative in its terms. But negative words are ordinarily used as a legislative device to make a statute imperative. If the requirements of a statute which prescribes the manner in which something has to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in a particular and specified manner and in no other, then those requirements are in all cases absolute and the neglect to obey or fulfil them exactly will invalidate the whole proceedings, (See Craies on Statute Law, Fifth Edition at p. 243). The provision of Order 18, Rule 3-A is couched in affirmative terms. It prescribes a certain procedure but imposes no penalty for its non-observance. The rule itself provides an exception and gives discretion to the court to permit the examination of a party at a later stage for reasons to be recorded by it. That indicates the anxiety of Parliament to ensure that the subordinate courts should not shut out evidence of a party which is necessary for a just decision of the case. It could not have been the intention of the legislature to debar the court from permitting examination of a party even though the just decision of the case demands it. The paramount consideration of the judicial process being the doing of justice to the parties, the Court can examine a party at a later stage if it considers the evidence essential despite some negligence on the part of a party.

11. In interpreting a Code of Procedure, it would be useful to keep in mind that the rules of procedure are intended to aid the administration of justice and not to hamper it. They should be used as aids rather than as obstacles. Lord Buckmaster once pointed out:

"All rules of court are nothing but provisions intended to secure proper administration of justice.

It is, therefore, essential that they should be made to serve and be subordinate to that purpose."

The Supreme Court in State of Gujarat v. Ramprakash P. Puri, (1970) 2 SCR 875 indicated:

"Procedure has been described to be a hand-maid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause."

As a general rule, evidence should never be shut out. Parties should be given full opportunity to give evidence if the justice of the case demands it, However negligent or careless may have been the omission of the litigant to examine himself at the commencement of the evidence of his side, the same should be allowed if that can be done without violence to the statute or irreparable prejudice to the adversary. There is no injustice if the other side can be compensated in terms of costs.

The following passages from the judgment of Bose, J. in the case of Sangram Singh v. Election Tribunal, Kotah, AIR 1955 ,SC 425 (426) are very apposite and may aptly be read here:

"Now a code of procedure must be regarded as such. It is 'procedure', something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to 'both' sides) lest the very means designed for the furtherance of justice be used to frustrate it.

Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to, But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible in the light of that principle."

It is useful to quote the oft quoted passage of Lord Penzance in 4 AC 404 in this connection:

"Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even

extinguish legal rights, and is thus made to govern when it ought to subserve."

(Quoted from Aiyers Manual of Law Terms and Phrases, 7th Edn. at page 644).

12. The harm and inconvenience that will result from holding a provision to be mandatory should be weighed against the harm and inconvenience that will result from holding the provision as directory. The conclusion which results in greater harm should be avoided as that could not have been the intention of the legislature. Courts have been set up to administer justice and wide discretion has been vested in them so that the paramount purpose doing of justice to the litigating parties -- may not be frustrated. It is, therefore, a cardinal rule not to interpret a provision in a statute in a manner which abrogates judicial discretion unless Parliament has explicitly or by necessary intendment curtailed or withheld the same. If the provisions of the rule are held to be mandatory, grave hardship and injustice will be caused to the litigants. Without the evidence of the party himself justice cannot be done in most cases. If, however, the rule is held to be directory, a party, no doubt, will be put to some inconvenience but he will not go without any remedy. If the party examining himself at a later stage introduces new facts it will be open to the opposite party to ask the court to recall the witnesses for further cross-examination under Rule 17 of Order 18, C.P.C. and he can be compensated by costs."

20. The Orisa High Court, in the case of **Swami Hari Harananda Giri Vs. Yogoda Satsangha Society of India and Others (Supra)**, followed the aforesaid Division Bench judgment of the said court in the case of **Maguni Dei v. Gouranga Sahu; AIR 1978 Orissa 228**.

21. Adverting to the facts of the present case and perusal of the order sheet indicates that the case was being got adjourned by the defendant-appellant repeatedly and on 08.07.1987, when the examination-in-chief of PW-1 Chhote Lal was recorded, non was present for the side of defendant-appellant for cross-examination. However later on learned counsel for the defendant-appellant appeared and without any objection or protest requested for cross-examination, which was allowed but since the time was over, the case was fixed on 10.08.1987 for cross-examination. The cross-examination of PW-1 and the evidence of PW-2 was recorded on 25.04.1988, who were cross-examined by the counsel of defendant-appellant without any objection. However, it appears that evidence of

the PW-2 Ram Asrey was recorded and cross-examined again on 09.05.1988 and nothing has been shown that any objection was raised in this regard by the defendant-appellant at any stage. Even otherwise learned counsel for the defendant-appellant has failed to show as to what prejudice has been caused to the defendant-appellant by recording the evidence of the plaintiff-respondents no.1 as PW-2 and evidence of Radhey Lal as PW-1, and before recording the evidence of other witnesses on behalf of the plaintiff-respondents, therefore this Court is of the view that the judgment and decree passed by the court's below can not be said to be vitiated and set-aside on this ground. Thus, the contention of learned counsel for the defendant-appellant in this regard is liable to be repelled and repelled accordingly.

22. One of the pleas of learned counsel for the appellant is that correction deed was made during pendency of appeal and without amendment, the evidence could not have been adduced in regard to the same and considered. The plaintiff-respondents are claiming their title on the basis of registered sale deed executed on 31.10.1979 by Shri Chhote Lal as power of attorney holder of Smt. Lalti Devi, whereas the Chhote Lal and Smt. Lalti Devi were the owner of the property in dispute but it was not disclosed in the sale deed that it has been executed by Chhote Lal on his own behalf also. He appeared as PW-1 in the witnesses box and stated that he and Lalti Devi had sold the land in dispute to the plaintiff-respondents and they also handed over the possession of the land in dispute to them. Smt. Lalti Devi was the sister-in-law (Bhabhi) of Chhote Lal. The evidence of PW-1 Chhote Lal indicates that neither any question was put in the cross-examination in regard to non sale of the land in dispute on behalf of Chhote Lal nor anything could be extracted to show that he had not executed the sale deed on his behalf. However during pendency of the appeal a correction deed dated 30.08.1989 was executed by Chhote Lal to the effect that inadvertently in the sale deed executed on

31.10.1979 on his own behalf was left to be incorporated, whereas the said sale deed was executed by him on his own behalf and as power of attorney holder of Smt. Lalti Devi and accordingly the stamp duty and the registration fees were paid, therefore the correction deed is being executed and got registered. Once the correction deed was executed and got registered, the original deed would stand corrected from the date of its execution and registration.

23. The correction deed dated 30.08.1989 was filed before the appellate court through application Paper No.15-C/2 for admitting a document filed as per list 16-C/1. The objection to the application was filed as Paper No.24-C/2. The appellate court, after considering the application and the objection, allowed the same by means of the order dated 16.09.1993 and took the correction deed on record under Order-41, Rule-27 CPC and by the same order, the first appellate court granted time to file rebuttal, if any, but admittedly no rebuttal was filed by the defendant- appellant, therefore now, at this stage, no objection can be raised by the appellant in this regard. The said correction deed was taken on record on the ground that the document itself came into existence after the appeal was filed and not earlier. While admitting the document, it was also observed that the admissibility of a document does not mean necessarily that its effects will be accepted down the throat in all circumstances and points are still to be threshed out finally at the time of arguments.

24. Order-41, Rule-27 CPC provides production of additional evidence in appellate court in three contingencies. Firstly, if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. Secondly, 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. Thirdly, the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. In the present case the correction deed was executed and got registered during pendency of the first appeal, therefore, it could not have been available and produced before the trial court before passing of the judgment and decree by the trial court, therefore it can not be said that the first appellate court had erred or done any illegality or perversity in taking the same on record. However while taking on record the opportunity of rebuttal was afforded to the defendant-appellant but neither any rebuttal was filed nor the said order was challenged, therefore now he can not raise any objection in this regard. Even otherwise, learned counsel for the defendant- appellant has failed to show any illegality, error or perversity in the order passed by the first appellate court under Order-41, Rule-27 CPC.

25. The Hon'ble Supreme Court, in the case of **A. Andisamy Chettiar Vs. A. Subburaj Chettiar (Supra)**, has considered the provisions of Order-41, Rule 27 and held as under:-

11. Under the scheme of the Code of Civil Procedure, 1908 (for short "the Code") whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 of Order 41 of the Code. Rule 27 of Order 41 reads as under:

"27. Production of additional evidence in appellate court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(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

(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.” (emphasis supplied)

12. *From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Ext. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now it is to be seen whether the third condition i.e. one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.*

13. *In K.R. Mohan Reddy v. Net Work Inc. [K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257] this Court has held as under: (SCC p. 261, para 19)*

“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”

14. *In North Eastern Railway Admn. v. Bhagwan Das [North Eastern Railway Admn. v. Bhagwan Das, (2008) 8 SCC 511] this Court observed thus: (SCC pp. 515-16, para 13)*

“13. Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 CPC, which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as may be prescribed. These conditions are prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said Rule are found to exist.”

15. *In N. Kamalam v. Ayyasamy [N. Kamalam v. Ayyasamy, (2001) 7 SCC 503] this Court, interpreting Rule 27 of Order 41 of the Code, has observed in para 19 as under: (SCC p. 514)*

“19. ... the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal— it does not authorise any lacunae or gaps in the evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.”

16. *In Union of India v. Ibrahim Uddin [Union of India v. Ibrahim Uddin, (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362] this Court has held as under: (SCC p. 171, para 49)*

“49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.” (emphasis in original)

26. In view of above, the first appellate court has not committed any perversity, illegality or error in taking the correction deed on record and granting time for rebuttal. However since no rebuttal was filed, the same could have been considered in accordance with law and rightly considered.

27. One of the contentions of the learned counsel for the appellant is that any evidence adduced in absence of pleading can not be considered and since the pleadings in regard to the sale deed executed by Manno Devi in favour of Ram Chandra, minor son of Babu Lal and the sale deed executed by him in favour of Chhote Lal and Lalti Devi and correction deed were not made, the same could not have been considered in evidence. The suit for permanent injunction was filed claiming title on the basis of the registered sale deed executed on 31.10.1979, which is the basis of the suit and it has not been challenged by the defendant-appellant or anybody else and the same has been got corrected through correction deed dated 30.08.1989. The

other two sale deeds executed by Manno Devi and Ram Chandra are not the basis of the suit. They only show the chain of title to the plaintiff-respondents. Even otherwise, the said registered sale deeds have also not been challenged or set-aside by any competent court.

28. The appellate court in view of the registration of the earlier two sale deeds has drawn a presumption of execution of those sale deeds by the persons, who have executed the said sale deeds and in accordance with law. This Court does not find any illegality or error in it because as per Section 90-A of the Evidence Act, 1872, the said presumption could have been drawn. However, if the sale deed dated 31.10.1979 could not have been proved, the position may have been different.

29. Order-6, Rule-2 CPC provides that the pleadings to state material facts and not evidence. Sub-Rule (1) provides that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Rule 3 of Order-6 provides forms of pleadings and the forms in Appendix 'A' can be used where they are applicable and in absence, forms of the like character, as nearly as may be, shall be used. Rule-4 of Order-6 provides that particulars to be given where necessary. It provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. Thus, the pleadings required only a statement in a concise form or material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved.

30. The Hon'ble Supreme Court, in the case of **Kalyan Singh Chouhan Vs. C.P. Joshi (Supra)**, has observed that it is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties and pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. The relevant paragraph-19 is extracted here-in-below:-

19. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted." Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide : Sri Mahant Govind Rao v. Sita Ram Kesho, (1898) 25 Ind. App. 195; M/s. Trojan & Co. v. RM. N.N. Nagappa Chettiar, AIR 1953 SC 235; Raruha Singh v. Achal Singh & Ors.; AIR 1961 SC 1097; Om Prakash Gupta v. Ranbir B. Goyal, AIR 2002 SC 665; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. Hindustan Construction Company Ltd., (2010) 4 SCC 518.)

31. The Hon'ble Supreme Court, in the case of **Biraji @ Brijraji Vs. Surya Pratap and Others (Supra)**, has held that it is fairly well settled that in absence of pleading, any amount of evidence will not help the party.

32. The Hon'ble Supreme Court, in the case of **Srinivas Raghavendrarao Desai (D) by LRS. Vs. V. Kumar Vamanrao @ Alok (Supra) and Others**, has observed that there is no quarrel with the proposition of law that no evidence can be let beyond pleadings.

33. A coordinate Bench of this Court, in the case of **Smt. Sushila Devi Vs. Smt. Jasoda Bai and Others (Supra)**, has observed that Order 6 of the Civil PC deals with pleadings generally. Rule 2 of the said Order lays down that every pleading shall contain and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Rule 3 of the said Order further lays down that the forms prescribed in Appendix A to the Civil P.C. shall as far as possible, be adhered to. The sale deed dated Nov. 30, 1955, referred to above, was in the nature of evidence and it should not have been pleaded by the plaintiff. The alleged shortcoming in the plaint pointed out by the court of appeal was actually not a defect and no presumption could have been drawn against the plaintiff on that account.

34. A coordinate Bench of this Court, in the case of **Ved Prakash Rastogi Vs. Nagar Palika Badaun (Supra)**, has considered the provisions of Order-6, Rule-2 CPC and observed that the plaintiff in paragraph-5 of the plaint has pleaded that " The plaintiff is the bhumidhar and owner in possession over the property in suit for more than 12 years.", which is precise, concise and in accordance with the provisions of Order-6, Rule-2 C.P.C. These are the crucial facts, which are essential for his ownership and possession. How the plaintiff is the owner or in possession is required to be proved by the plaintiff by way of evidence. So far as the ownership is concerned, the plaintiff had proved by way of filing a certified copy of the sale deed executed in his favour. It was not necessary for the plaintiff to state in his plaint that he was the owner on the basis of a sale deed. It was sufficient for the plaintiff to allege in his Plaint that he was the owner. The relevant paragraphs no.17 to 22 are extracted here-in-below:-

"17. On the question of ownership, the lower appellate court had ousted the plaintiff on the ground that the plaintiff did not plead in his plaint specifically about the source of his ownership nor

pleaded about the execution of the sale deed in his favour. The lower appellate court, also held that the certified copies of the sale deed could not be relied upon nor was it admissible in evidence, since specific pleadings had not been made by the plaintiff in his plaint.

18. *In my view, the approach adopted by the lower appellate court, is patently perverse and is against the provisions of Order VI, Rule 2, C.P.C. which is quoted hereunder:*

Order VI, Rule 2. Pleading to state material facts and not evidence.--(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be powered.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

19. *A perusal of Order VI, Rule 2, C.P.C. indicates that the pleadings should contain only a statement in a concise form of the material facts on which a party relies for his claim. In the present case, the plaintiff in paragraph-5 of the plaint has pleaded the following:*

The plaintiff is the bhumidhar and owner in possession over the property in suit for more than 12 years.

20. *In my opinion, this pleading is precise, concise and is in accordance with the provisions of Order VI, Rule 2, C.P.C. The plaintiff alleges that he is the bhumidhar, owner and in possession for more than 12 years. These are the crucial facts, which are essential for his ownership and possession. How the plaintiff is the owner or in possession is required to be proved by the plaintiff by way of evidence. So far as the ownership is concerned, the plaintiff had proved by way of filing a certified copy of the sale deed executed in his favour. It was not necessary for the plaintiff to state in his plaint that he was the owner on the basis of a sale deed. It was sufficient for the plaintiff to allege in his Plaint that he was the owner.*

21. *In Smt. Sushila Devi v. Smt. Jasoda Bai and Ors. 1981 ALJ 263, in a suit for possession involving a dispute with regard to the ownership of a platform in a house, the Court held that it was sufficient for the plaintiff to plead that he was the owner and was in possession of the platform in his plaint which was in accordance with the provisions of Order VI, Rule 2, C.P.C. The Court held:*

In order to substantiate her claim, the plaintiff relied on the sale deed dated November 30, 1955 executed by Pooran Chand jointly in her favour and in favour of Shanti Devi. It has been observed by the Court of appeal that the said sale deed had not been specifically pleaded in the plaint, and, as such it was not

open to the plaintiff to rely on the same. This observation of the Court of appeal is not sustainable in law. Order VI of the Civil Procedure Code deal with pleadings generally. Rule 2 of the said Order lays down that every pleading shall contain and contain only, a statement in concise form of the material facts on which the party pleading relied for his claim or defence, as the case may be, but not the evidence by which they are to be proved. Rule 3 of the said order further lays down that the forms prescribed in Appendix A to the Civil Procedure Code shall as far as possible, be adhered to. The sale deed dated November 30, 1955, referred to above, was in the nature of evidence and it should not have been pleaded by the plaintiff. The alleged shortcoming in the plaint pointed out by the court of appeal was actually not a defect and no presumption could have been drawn against the plaintiff on that account.

20. The aforesaid judgment is squarely applicable to the present case and fortifies the view taken by me. Consequently, the lower appellate court was not justified in holding that the plaintiff was unable to prove his source of title and further committed an error in holding that the sale deed could not be considered in evidence."

35. In view of above, there is no set form of pleadings. The pleading should be precise, concise and in accordance with Order-6, Rule-2 CPC and the evidence by which the pleadings are to be proved need not be pleaded. The evidence can be adduced to prove the pleadings. However the evidence can not be adduced in absence of pleadings, therefore if the pleading has not been made, the evidence to prove the same can not be adduced. Thus the nature of pleading and evidence to prove it depends on the facts and circumstances of the case.

36. Adverting to the facts of the case, the plaintiff-respondents has stated in paragraph-2 of the plaint that the plaintiffs had purchased the plot in dispute through registered sale deed dated 31.10.1979 from Shri Chhote Lal, the power of attorney holder of Smt. Lalti Devi and since the time of purchase they are in possession till date, therefore, the pleading was sufficiently made in regard to their ownership to the effect that the land in dispute was purchased from the previous owner and after purchase they are in possession of the land in dispute. Thus, the claim is based on the sale deed dated 31.10.1979, which includes

as to how the executor was owner, which is not required to be pleaded. However, if objection is raised any evidence is required to be adduced to prove as to how the executor was owner, the evidence could have been adduced and considered in accordance with law and considered accordingly. Similarly, in the written statement a plea was taken that Smt. Lalti Devi was not the previous owner of the land in dispute and she had no right to execute the sale deed and Chhote Lal was not her power of attorney holder. The previous owner of the land in dispute was Devi Deen, the real uncle of the defendant-appellant and he was in possession and owner of the land in dispute and after his death it is continuing. It was required to be proved by cogent evidence, which the defendant-appellant has failed to do, which is apparent from the findings recorded by the first appellate court on the basis of evidence and material on record and it does not suffer from any perversity, illegality or error.

37. One of the pleas of learned counsel for the defendant-appellant is that the suit for permanent injunction without prayer for declaration was not maintainable. The suit for permanent injunction only is not maintainable if there is any cloud on the title of plaintiff and in such circumstance, the plaintiff is required to pray for declaration of his title also. Therefore it is to be seen as to whether, there was any cloud on the title of plaintiff-respondents and the cloud on the title of plaintiff-respondent was genuine and of any substance on account of which he was required to make prayer for declaration also.

38. The defendant- appellant pleaded in written statement that Smt. Lalti Devi had no right to execute the sale deed and as she was not the owner of the land in dispute and the uncle of the defendant-appellant Devi Deen was the owner of the land in dispute. However it was without any evidence even prime facie, whereas there is registered sale deed in favour of the plaintiff-respondents, therefore it can not be said that there was a cloud on the title of the plaintiff-respondents and

the suit for permanent injunction without prayer for declaration was not maintainable. Thus, the contention of learned counsel for the defendant-appellant is misconceived and not sustainable.

39. A coordinate Bench of High Court of Madras, in the case of **Arulmigu Velukkai Sri Azhagiya Singaperumal Devasthanam rep. by its Trustees and Others Vs. G.K. Kannan and Others (Supra)**, has taken similar view. The relevant paragraphs 35 to 39 are extracted here-in-below:-

"35. It can now be deduced that, to constitute a cloud on plaintiffs title, there must be evidence for the Court to conclude prima facie that the plaintiffs assertion of title to a legal character, or to a right over a property has come under the cloud. Let it not be forgotten, that life's experience in this country, which both the Courts and the legal practitioners would vouchsafe, that not every litigant makes a bonafide denial of plaintiffs title. While, a bonafide denial of plaintiff title with some evidence may merit consideration, to nonsuit the plaintiff with a colourable denial of former's title will be unconscionable, if only it is acknowledged that fairness is integral to our adversarial jurisprudence.

36. Hence, it is necessary for the Court to weigh:

- The quality of the pleadings to ascertain if the defendant alleges if a third party to the suit has the title, or, if he traces his title to the same source from which plaintiff also derives title, or if the defendant relies on an independent source of title to some other source;*
- If the evidence produced by the defendant to prove his plea of denial of the plaintiffs title covers the same period for which the plaintiff has produced the evidence, or whether such evidence as produced by both the plaintiff and the defendant are separated by a clear time-line;*
- If any adverse inference is required to be drawn against any of the parties for not producing the evidence which is in their capacity to produce, and evaluate the relative quality of the evidence made available before it. (What is indicated here is not exhaustive since every case has its own character. When the rule of probability determines the nature of the decision to be made, it can never be exhaustive too.). This precisely is the exercise what the Court engages in it is required to enter a finding on a disputed title incidentally in a suit for bare injunction.*

37. Ideally, the Court may engage in a certain process to achieve a certain degree of balance between a bonafide denial of title and a colourable denial of title:

- *Firstly, it may independently evaluate the plaintiff's title based on the evidence he produces, and then evaluate the resistance to it in terms of the defendant's case. Then it may try viewing the conclusion arrived on the plaintiff's case through the conclusion arrived in defendant's case (something like holding a glass in between the eye and the object).*
- *If the vision to the plaintiff's title is not obstructed or blurred, then there is no cloud on plaintiff's title, and if it is not, then there is one (though in actual working, the mind works faster and enables an understanding instantaneously).*
- *And if after this process, the Court holds that the suit is maintainable without a relief of declaration, then subject to the rule of res judicata, the defendant may institute a suit to establish his title.*

38. The above course, in the estimate of this Court, will infuse a certain degree of processual fairness to the whole discourse relating to 'cloud on title', and non-suiting the plaintiff for not seeking a declaratory relief. If it were to be understood differently, then a person with a settled title and possession for a long period can face a threat to such title at anytime of the defendant's choice, who may emerge from nowhere, with mere denial of the plaintiff's title on his lip. And the defendant will be under no burden to prove his case, since the defendant in our legal system can recline on the comfort of the procedural law, and wait for the plaintiff to prove his title. And, in the process, he may count every shades of weakness in the plaintiff's case, the advantage of which the plaintiff does not have, since the law on burden of proof does not permit the plaintiff to rely on the weakness of the defendant's case.

39. If fairness has to reign supreme in our processual jurisprudence, it is necessary to eliminate a seeming opportunity available to the defendant to steal an unfair procedural advantage over the plaintiff. It then becomes indispensable for Courts of facts to realise their responsibility, assert their role as fair arbiters within the bounds of available procedure, and ascertain if the denial of the plaintiff's title by the defendant is bonafide, or hollow and colourable.

40. A full bench of this Court, in the case of **Ram Jas And Others Vs. Surendra Nath and Another (Supra)**, considered the question referred to it i.e. "Whether Sub-section (2) of Section 90-A of the Evidence Act as amended by the U. P. Civil Laws (Reforms and Amendment) Act controls the operation of Section 90(1) and (2) of the Evidence Act as amended by the said U. P. Civil Laws (Reforms and Amendment) Act, 1954." and answered the same in paragraphs nos.14, 15 and 16, which are extracted here-in-below:-

14. The presumptions under the Evidence Act are only the inferences which a logical and reasonable mind normally draws. Facts and circumstances (from) which certain inferences follow are indicated in various provisions of the Evidence Act running from Sections 79 to 90-A. As already seen the sections of the Evidence Act Lay down different circumstances in which a presumption is to be raised. Whenever the law permits the raising of a presumption the Court can by reason of Section 4 of the Evidence Act raise the presumption for purpose of proof of a fact. If the presumption is available in one section it can raise it under that section. If it is not available in one section and is available in another section, then the Court can raise presumption under that section. It all depends upon the circumstances available in the case as applicable to a particular document. Hence, even if the case falls under Section 90-A and sub-section (2) thereof is applicable and no presumption can be drawn under Section 90-A(1) it will not exclude the Court from drawing the presumption, if the circumstances permit it to be drawn, under any other provision of the Evidence Act including Section 90 of the Act. The presumption, if available under Section 90, can, therefore, be raised by the Court even after coming to the conclusion that a presumption under Section 90-A is not available.

15. The presumptions available under Sections 90 and 90-A are also not similar. Section 90(2) permits the raising of the presumption in respect of the signature, handwriting, execution and attestation, while Section 90 permits a presumption only in respect of execution. Section 90 deals with documents which are more than 20 years old while Section 90-A places no such restriction and includes also documents from judicial record. Neither of the two sections, therefore, can be said to be occupying a field which the other exclusively occupies. They deal with different fields and different circumstances and permit different types of presumptions to be raised.

16. For the reasons given above it is not possible to hold that Sub-section (2) of Section 90-A will override and nullify Section 90 if the document, though more than twenty years old, is the basis of the suit or the defence or is relied upon in the plaint or written statement. We are, therefore, of opinion that Om Prakash v. Bhagwan (AIR 1974 All 389) does not lay down the correct law.

41. The defendant-appellant has taken a plea that Smt. Lalti Devi had no right to execute the sale deed and Chhote Lal was not his power of attorney holder, whereas it has not been disputed that the registered sale deed dated 31.10.1979 executed by Chhote Lal neither has been executed by him as power of attorney holder of Smt. Lalti Devi nor it is in regard to the land in dispute, the boundaries of which given in the said sale deed have also not been disputed. According to the boundaries given in the sale deed, the house of Om Prakash is on

the east, house of Smt. Manno Devi on the west, agricultural field of Jagat Narian on the north and road railway station, Atariya on the south of village Atariya, Pargana- Manwa, Tehsil- Sidhauli, District- Sitapur. The correction deed of the said sale deed dated 31.10.1979 was executed by Chhote Lal on 30.08.1989 to the effect that the said sale deed has been executed by him as power of attorney holder of Smt. Lalti Devi and on his behalf also. Despite opportunity of rebuttal granted to the defendant-appellant, no rebuttal had been filed. Admittedly, the said sale deed and the correction deed have neither been challenged nor set-aside by any competent court of law till date.

42. The first appellate court, after considering the pleadings, evidence and material on record found that as per the boundaries which have been given in the plaint, the house of Smt. Manno Devi is on the western side of the land in dispute, who had executed the sale deed of the land in dispute on 28.08.1970, which shows the house of Minmukira i.e. Manno Devi on the western side. The same boundaries are in sale deed dated 31.10.1979 in favour of the plaintiff-respondents. The boundaries given in the plaint have also not been denied or disputed by the defendant-appellant in the written statement. In evidence also the defendant-appellant has stated that the land in dispute is after his thatch on the eastern side of his house and the house of his brother Ram Sundar is adjacent to his house. Therefore, the admitted boundaries of the plaint are in accordance with the sale deeds.

43. The first appellate court has recorded a finding that Laxman was a resident of Basantpur, who used to come to Manno Devi in the concerned village and the Devi Deen had come with him. The defendant-appellant has also not stated in his evidence that Manno Devi had any other house in the village. He has also admitted the relationship of Laxman and Devi Deen, from whom he claimed the right on land in dispute being his uncle. He also admitted that he has

seen his grand mother, who had died in the year 1980, who used to live with his brother Ram Sundar. Ram Sundar is son of Nanhe. It is also admitted that Ram Sundar was residing in the house on the western side of the land in dispute, which has been partitioned and in one of the portion, the defendant-appellant Raja Ram son of Putai is residing and in the other Ram Sundar son of Nanhe. Therefore, it is also apparent that the grand mother of the defendant-appellant and wife of Laxman was residing on the western side of the land in dispute. He has also admitted that Devi Deen has died and his grand mother had died prior to Devi Deen. The defendant-appellant on the one hand shows his ignorance about Manno Devi but on the other hand though admits residence of his grand mother in the house on the western side in a portion of which he is residing but does not disclose her name, whereas admits she had died before the death of uncle of the defendant-appellant. The DW-3 and DW-4, who are aged about 80 years and 65 years respectively and of the same village have deposed that Smt. Manno Devi was the owner of the land in dispute and she had sold it to Babu Lal. DW-4 has also stated that the house on the western side of the land in dispute is of Manno Devi in which Raja Ram and Ram Sundar are living after division. The defendant-appellant has also admitted in his evidence the residence of Laxman, who was of Basantpur. He had three sons Devi Deen, Nanhe and Putai and had come to Atariya to Manno Devi. It is also proved from admission of the defendant-appellant that he and his uncle Devi Deen had sold their some land of Basantpur and also placed on record of the trial court copies of sale deeds.

44. The first appellate court, after considering the pleadings, evidence and material on record has also recorded that the defendant-appellant has taken different stands at different places in regard to the land in dispute and also about the ownership of the land in dispute from his uncle and father. The first appellate court, after considering

the pleadings, material and evidence on record has recorded a finding that the land in dispute and the house on the western side of the land in dispute was of the Manno Devi and not of Devi Deen or his brothers and if it would have been of Devi Deen then he must have challenged the sale deed executed by Smt. Manno Devi because the sale deed was executed by her in the year 1970 and Devi Deen had died in the year 1980.

45. The first appellate court, after considering and scrutinizing the pleadings, evidence, material on record and also the commission report has recorded a finding of possession and ownership of the plaintiff-respondents on the land in dispute and also that if it would have been of the defendant-appellant and he would have been using the same, it would not have been left in the shape of Khandhar in the dilapidated condition.

46. In view of above and considering the over all facts and circumstances of the case, this Court does not find any perversity, illegality or error in the findings recorded by the first appellate court on the basis of pleadings of the parties, evidence and material on record. The substantial question of law formulated by this Court is answered accordingly. This second appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

47. The second appeal is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar, J.)

Order Date :- 11.06.2024
Haseen U.