



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

REGULAR SECOND APPEAL NO.263 OF 2013 (DEC/INJ)

BETWEEN:

1. SHIVANANDA @ SHIVANANDA SHETTY
S/O LATE BASAPPA SHETTY,
AGED ABOUT 78 YEARS.
2. LALITHAMMA
SINCE DEAD, BY LRS.
3. M.S. UMESH
S/O SHIVANANDA,
AGED ABOUT 53 YEARS.
4. M.S. MAHESH
S/O SHIVANANDA,
AGED ABOUT 51 YEARS.
5. M.S. GIRISH
S/O SHIVANANDA,
AGED ABOUT 49 YEARS.
6. SMT. M.S. ANITHA
W/O M.N. SIDDALINGAPPA,
AGED ABOUT 47 YEARS.
7. M.S. SIDDRAMESH
S/O SHIVANANDA,
AGED ABOUT 45 YEARS.
8. SHIVANANDA @ SHIVANANDA SHETTY
S/O LATE BASAPPA SHETTY,
AGED ABOUT 78 YEARS.

Digitally signed
by CHAYA S A
Location: HIGH
COURT OF
KARNATAKA



APPELLANT NOS.3, 5, 6 AND 7 ARE
REP. BY THEIR G.P.A. HOLDERS
APPELLANT NOS.1 AND 4.

ALL ARE RESIDENTS OF
K.M. ROAD, MEGALPET,
MUDIGERE TOWN - 577 132.

...APPELLANTS

(BY SMT. SUSHEELA S., SENIOR COUNSEL FOR
SRI. SOMANATHA H., ADVOCATE)

AND:

ST. MARTHAS CONVENT
REP. BY ITS SENIOR SUPERIOR SISTER COLLETTTO,
AGED ABOUT 73 YEARS,
K.M. ROAD, NEAR BUS STAND,
MUDIGERE,
CHIKKAMAGALURU DISTRICT - 577 132.

...RESPONDENT

(BY SRI. K.V. DHANANJAY, ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER
SECTION 100 OF THE CODE OF CIVIL PROCEDURE AGAINST
THE JUDGEMENT AND DECREE DATED 10TH DECEMBER, 2012
PASSED IN REGULAR APPEAL NO.55 OF 2011 ON THE FILE OF
PRESIDING OFFICER, FAST TRACK COURT, CHIKKAMAGALURU,
DISMISSING THE APPEAL AND CONFIRMING THE JUDGEMENT
AND DECREE DATED 17TH FEBRUARY, 2011 PASSED IN
ORIGINAL SUIT NO.111 OF 2003 ON THE FILE OF SENIOR
CIVIL JUDGE, CHIKKAMAGALURU.

THIS REGULAR SECOND APPEAL HAVING BEEN
RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT
THIS DAY, ***E.S. INDIRESH J.***, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH



CAV JUDGMENT

This appeal is preferred by the plaintiffs challenging the judgment and decree dated 10th December, 2012 passed in Regular Appeal No.55 of 2011 on the file of the Presiding Officer, Fast Track Court, Chikkamagaluru (for short, hereinafter referred to as '*First Appellate Court*'), dismissing the appeal and confirming the judgment and decree dated 17th February, 2011 passed in Original Suit No.111 of 2003 on the file of the Senior Civil Judge, Chikkamagaluru (for short, hereinafter referred to as '*Trial Court*'), wherein the suit of plaintiffs filed for declaration and permanent injunction came to be dismissed.

2. For the sake of convenience, parties in this appeal are referred to as per their ranking before the Trial Court.

3. The plaint averments are that, the plaintiff No.1 inherited 4 acre 35 guntas of land in Survey No.10 of Mudigere Village after the death of his father Basappa Shetty. Thereafter, the plaintiff No.1 sold 1 acre 35 guntas of land in favour of one Bethany Congregations as per registered Sale Deed dated 09th January, 1956 and he gave consent for acquisition of 20 guntas of land for the purpose of construction



of B.D.O. Office at Mudigere in the aforementioned land. It is also stated that, 1 acre of the land was given to one Srikantaswamy by the plaintiff No.1 in the aforementioned land. Accordingly, as there are several sub-divisions in the above said land, a new Survey No.10/1Ap was given to the remaining extent of 1 acre 20 guntas. It is averred that, a registered Partition Deed dated 28th June, 1993 was executed in the family of the plaintiffs and as such, suit schedule property along with other properties had fallen to the share of the plaintiffs. It is further stated that, the plaintiffs are in peaceful possession of the suit schedule property.

4. It is further contended in the plaint that the defendant-Institution filed Form No.7 before the Land Tribunal, Mudigere and occupancy right was granted in favour of the defendant-Institution. It is the case of plaintiffs that the defendant being a non-agricultural institution has no authority to secure occupancy right under the provisions of Karnataka Land Reforms Act. It is also stated that the plaintiff No.1 and the deceased plaintiff No.2 had sold an extent of 1 acre 35 guntas in favour of the predecessor-in-title of the defendant as per the registered Sale Deed dated 09th January, 1956 and



retained the property bearing Survey No.10/1Ap which is the suit schedule property in the suit, claiming declaratory relief. It is also stated that the Assistant Commissioner, Chikkamgaluru, by order dated 26th February, 2008, confirmed the possession to an extent of 1 acre 34 guntas in land bearing Survey No.10/1Ap. It is the grievance of plaintiffs that the defendant is interfering with the peaceful possession and enjoyment of suit schedule property and as such, plaintiffs preferred Original Suit No.111 of 2003, seeking relief of declaration with consequential relief of permanent injunction.

5. After service of notice, defendant entered appearance and filed detailed written statement denying the averments made in the plaint. It is the specific case of the defendant that the plaintiffs have filed Original Suit No.163 of 1996 against the Town Municipal Council, Mudigere in respect of the suit schedule property, seeking relief of permanent injunction and the said suit came to be decreed on 01st February, 2000. It is contended by the defendant that the suit schedule property mentioned in the earlier suit in Original Suit No.163 of 1996 and the present suit in Original Suit No.111 of 2003 are one and the same, however, the boundaries



mentioned in the earlier suit in Original Suit No.163 of 1996 and in the instant suit in Original Suit No.111 of 2003 and as such, sought for dismissal of the suit.

6. It is also contended by the defendant in written statement that the plaintiffs filed an application before the Tahasildar, Mudigere Taluk in LRF(7)203/1974-75, seeking survey, measurement and for possession by fixing the boundaries in respect of the land bearing Survey No.10/1Ap and the Tahasildar, Mudigere Taluk, by order dated 20th June, 2002, directed the plaintiffs to approach the competent Civil Court, seeking recovery of possession of the land to an extent of 1 acre 08 guntas. It is further stated in the written statement that the defendant is in possession of the land as per the schedule mentioned in the registered Sale Deed dated 09th January, 1956 and therefore, it is pleaded that there is a discrepancy as to the boundaries of the land in question and accordingly, sought for dismissal of the suit.

7. It is also stated in the written statement that the predecessor-in-title of the defendant have purchased 4 acres of land in Survey No.10/1P from one K.T. Rajashekar as per the



registered Sale Deed dated 13th July, 1970 and also the Land Tribunal, Mudigere granted to an extent of 5 acre 35 guntas as per order dated 24th May, 1977 in favour of the defendant thus, the defendant is in peaceful possession and enjoyment of property ever since the date of purchase. It is further stated that the claim made by the plaintiffs is without valid documents to prove the ownership in respect of the subject matter of the land. Therefore, sought for dismissal of the suit.

8. The defendant also filed additional written statement and contended that the Land Tribunal, Mudigere has issued Form No.10 on 10th October, 1982 and on account of clerical mistake crept in the Land Tribunal order, the same was rectified by the Tribunal on 16th March, 1999 and therefore, it is contended that the order of Land Tribunal has attained finality.

9. Based on the pleadings on record, the Trial Court framed issues and additional issues for its consideration.

10. In order to prove their case, plaintiffs examined one witness as PW1 and got marked 20 documents as Exhibit P1 to P20. On the other hand, defendant examined 2



witnesses as DW1 and DW2 and got marked 49 documents as Exhibits D1 to D49. The Commissioner was appointed during the course of the Trial and Court Commissioner was examined as CW1 and got marked 7 documents as Exhibit C1 to C7.

11. The Trial Court, after considering the material on record, by its judgment and decree dated 17th February, 2011 dismissed the suit and being aggrieved by the same, plaintiffs preferred Regular Appeal No.55 of 2011 before the First Appellate Court. The appeal was contested by the defendant. The First Appellate Court, after re-appreciating the material on record, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Being aggrieved by the same, plaintiffs preferred the present appeal.

12. This Court, by order dated 24th October, 2024, admitted the appeal to consider the following substantial question of law:

"Whether Trial Court as well as First Appellate Court have erred in arriving at conclusions contrary to contents of Exhibits P1, P2, P6, P11 and D27"



13. Heard Smt. Susheela S., learned Senior Counsel on behalf of Sri. Somanatha H., appearing for appellants and Sri. K.V. Dhananjay, learned counsel appearing for the respondent.

14. Smt. Susheela S., learned Senior Counsel appearing for appellants contended that, both the Courts below have committed an error in not considering the fact that the title of the defendant cannot be a better title than that of its predecessor as the predecessor-in-title of the defendant purchased the land from the plaintiffs. It is argued that the defendant had taken plea that, though the defendant purchased 1 acre 35 guntas as per the registered Sale Deed dated 09th January, 1956, however, the predecessor-in-title of the defendant was in possession of the land as per the boundaries and the extent of land mentioned in the registered Sale Deed. Therefore, learned Senior Counsel submits that, both the Courts below misconstrued the oral and documentary evidence of the parties in this regard, and as such, sought for interference of this Court.

15. It is further argued by learned Senior Counsel appearing for appellants that the defendant admitted tenancy



under Bethany Congregations to whom the land measuring 1 acre 35 guntas was sold by the plaintiff No.1 and therefore, the defendant could not have been conferred with occupancy rights beyond the extent of 1 acre 35 guntas and this aspect of the matter was ignored by both the Courts below.

16. Learned Senior Counsel Smt. S. Susheela, appearing for appellants further argued that the appellants filed Application in IA.7 before the First Appellate Court under Order XLI Rule 27 of the Code of Civil Procedure, seeking production of the additional documents, however, the said application was dismissed without assigning proper reasons. It is also argued that both the Courts below have wrongly come to the conclusion that the name of the plaintiff No.1 is added in between Sl.Nos.III and IV of Exhibit P1. It is submitted by the learned Senior Counsel that the First Appellate Court exercised its jurisdiction beyond the permissible extent as contained under Order XLI Rule 31 of the Code of Civil procedure and therefore, both the Courts below ought to have harmoniously considered Exhibit P8-order passed by the Deputy Commissioner and Exhibit P9-order passed by the Assistant Commissioner as the said documents indicate that the plaintiffs



are in possession of the disputed land in question and these documents have been ignored by the Trial Court.

17. It is also argued by learned Senior Counsel appearing for appellants that the Trial Court had misconstrued in not identifying that, Adevappa Shetty S/o Siddappa Shetty and Adevappa Shetty S/o Malappa Shetty are different persons. The plaintiffs claimed right through Adevappa Shetty S/o Siddappa Shetty, however, the finding of the Trial Court relates to Adevappa Shetty S/o Malappa Shetty. Learned Senior Counsel appearing for appellants further contended that, both the Courts below have committed an error in appreciating the report of the Commissioner; so also, misconstrued the factual aspects on record and passed the impugned judgment and decree.

18. Learned Senior Counsel appearing for the appellants further argued that, this Court can mould the relief under Section 100 of the Code of Civil Procedure as to confirm declaration in respect of the subject land. In order to buttress her arguments, learned Senior Counsel Smt. S. Susheela appearing for appellants places reliance on the judgment of



Hon'ble Supreme Court in the case of ***HERO VINOTH (MINOR) vs. SESHAMMAL*** reported in (2006) 5 SCC 545 and argued that, as both the Courts below misconstrued the documents particularly Exhibit P6, this Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure requires to interfere with as to misconstruing of the documents. Accordingly, learned Senior Counsel appearing for appellants sought for interference of this Court

19. Per contra, Sri. K.V. Dhananjay learned counsel appearing for the respondent submitted that, as the Courts below on facts, rejected the contention of the plaintiffs claiming relief of declaration, this Court cannot go beyond the scope of Section 100 of the Code of Civil Procedure.

20. It is the specific contention of the learned counsel appearing for the respondent that the plaintiffs filed suit for declaration without there being a title based on the proper document and they are seeking relief of declaration based on the revenue documents and therefore contended that, the appeal deserves to be dismissed. He further argued that the plaintiffs failed to prove as to the possession of 4 acre 35



guntas of land and further PW1, in the cross-examination admitted that the ancestral property was only to an extent of 2 acre 35 guntas and after selling 1 acre 35 guntas thereby, acquisition of 20 guntas for the purpose of construction of B.D.O. Office, plaintiffs are having only 20 guntas. It is also argued by learned counsel appearing for the respondent that the plaintiffs are estopped from questioning the validity of the sale made by them in favour of the predecessor-in-title of the defendant. It is further argued that the record of rights do not confer title to the plaintiffs and therefore, the argument advanced by learned Senior Counsel appearing for the appellants cannot be accepted to consider the index of lands or record of rights to confer the relief of declaration in respect of the suit schedule property. By referring to registered Sale Deed dated 09th January, 1956, it is argued by the learned counsel appearing for the respondent that, nothing is stated in the Exhibit P6 as to the total extent of the land in Survey No.10 as 4 acre 35 guntas, however, it is stated in the Exhibit P6 that the plaintiffs are selling 1 acre 35 guntas in favour of the predecessor-in-title of the defendant and therefore, both the



Courts below after appreciating the material on record, rightly dismissed the suit and same has to be confirmed.

21. Learned counsel appearing for the respondent by referring to the Akharband/sketch (Exhibit D37), RR Patta Book-1996 (Exhibit D47) and Tippani Book dated 26th June, 1995 (Exhibit D48) and submits that, those documents do not contain the name of plaintiffs in respect of the land bearing Survey No.10, however contained the name of K.T. Rajashekar, Bethany Congregation, Abdul Hussain, Nanjappa Shetty and Rangappa. Therefore, it is argued that, both the Courts below evaluating the oral and documentary evidence on record particularly referring to admission made by the PW1 that 2 acre 35 guntas of land in Survey No.10 is ancestral property and out of which, plaintiffs sold 1 acre 35 guntas to Bethany Congregation, and 20 guntas of land has been acquired by the Government for the purpose of construction of B.D.O. Office and only 20 guntas of the land is remained with the plaintiff. Accordingly, he submits that, both the Courts below, have rightly passed the judgment and decree. Therefore, he sought for dismissal of the appeal.



22. In order to buttress his arguments, learned counsel appearing for the respondent referred to judgment of Hon'ble Supreme Court in the case of **HERO VINOTH (MINOR)** (*supra*) and argued that, this Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure has to look into substantial question of law and not mere question of law. Learned counsel appearing for the respondent by placing reliance on the judgment of Hon'ble Supreme Court in the case of **STATE BANK OF INDIA AND OTHERS vs. S.N. GOYAL** reported in (2008) 8 SCC 92 and argued that the appellants have not made out a case for answering the substantial question of law arises for consideration in the present appeal. While referring to the judgment of Hon'ble Supreme Court in the case of **DHARMARAJAN AND OTHERS vs. VALLIAMMAL AND OTHERS** reported in (2008) 2 SCC 741, learned counsel appearing for the respondent argued that, this Court while exercising jurisdiction under Section 100 of the Code of Civil Procedure, cannot re-appreciate the evidence as the same will not answer the substantial question of law. By placing reliance on the judgment of Hon'ble Supreme Court in the case of P. **KISHORE KUMAR vs. VITTAL K. PATKAR**



reported in (2023) 14 S.C.R. 796, learned counsel appearing for the respondent argued that, in a suit for declaration of title, the burden always lies on the plaintiffs to make out and establish a clear case for granting relief of declaration and as such, the weakness, if any of the case set-up by the defendant, would not be a ground to grant relief of declaration to the plaintiffs. Accordingly, he sought for dismissal of the appeal.

23. Having heard the learned counsel appearing for the parties, I have carefully examined the original records. Plaintiffs filed Original Suit No.111 of 2003 seeking relief of declaration with consequential relief of permanent injunction against the defendant alleging that the plaintiff No.1 inherited 4 acre 35 guntas in Survey No.10 of Mudigere Village after the demise of his father. On careful consideration of the aforementioned aspect and the finding recorded by both the Courts below, plaintiffs have not shown any material as to how the title of the suit schedule property being acquired by the father of the plaintiffs. Undoubtedly, the parent documents is absent. Be that as it may, the plaintiff No.1 sold 1 acre 35 guntas of land in Survey No.10 as per registered Sale Deed dated 09th January, 1956 in favour of Bethany Congregations



(predecessor-in-title of the defendant). It is the case of plaintiffs that, 20 guntas of land was acquired for the purpose of construction of BDO Office at Mudigere and plaintiff No.1 had given 1 acre of land to one Srikantaswamy as per the order of settlement. It is pertinent to mention here that the plaintiffs herein have filed suit in Original Suit No.163 of 1996 against the Town Municipal Council in respect of the very same schedule property on the file of the Civil Judge (Jr.Dn.) Mudigere seeking relief of permanent injunction, which came to be decreed in favour of plaintiffs on 01st February, 2000 and the perusal of the plaint in Original Suit No.163 of 1996 (Exhibit D1) and the judgment and decree dated 01st February, 2000 in Original Suit No.163 of 1996 (Exhibits D2 and D3) makes it clear that the boundaries mentioned in the above said suit and boundaries mentioned in the instant suit are altogether distinct and different. The entire crux of the matter as to the boundaries of the parties is based on either side of the Agalu, which demarcate the property of plaintiffs and defendant. On careful consideration of the record of rights in Survey No.10 at Exhibit P2 stipulates the names of seven cultivators, however, the name of the father of the plaintiff



No.1-Basappa Shetty or the name of the plaintiffs is not forthcoming. It is well settled principle that, the revenue documents do not confer title. On careful consideration of the averments made in the written statement, wherein the defendant disputes the title of the plaintiffs as to the suit schedule property, however, no basic or parental document has been produced by plaintiffs to establish legal right in respect of the suit schedule property and to verify the boundaries if so, provided in such documents. The defendants have produced Exhibits D37, D47 and D48 namely, Akarbandh, Patta Book and Tippani in respect of the land bearing Survey No.10, wherein, several demarcations have been made as to the total extent of 11 acre 24 guntas by inserting 9 acre 24 guntas, however, the aforementioned documents show the names of respective cultivators and as such, the name of father of plaintiffs-Basappa Shetty and the name of the plaintiffs is not forthcoming in the aforementioned documents. If at all the plaintiffs are the owners of the suit schedule property, then the name of the father of plaintiffs or the plaintiffs should have been mentioned or reflected in these documents. It is the grievance of the plaintiffs that the Eastern boundary mentioned



in the registered Sale Deed made in favour of Bethany Congregations as per Exhibit P6, wherein the plaintiffs have retained the suit schedule property on the Eastern side of the same. The said Eastern boundary was marked as Exhibit P6(a) however, as the extent of land has not been mentioned in Exhibit P6 since the said Sale Deed at Exhibit P6 has been executed by the plaintiffs in favour of Bethany Congregations and therefore, I am of the view that the finding recorded by the Trial Court on issue No.1 and additional issue No.1 are just and proper, which do not call for interference by this Court. It is well established principle in law that, in a suit for declaration, it is the duty of the plaintiffs to prove the title based on the valid documents and the weakness of the defendant cannot be a ground to grant relief of declaration as laid down by Hon'ble Supreme Court in the case of **P. KISHORE KUMAR** (supra).

24. It is also pertinent to mention here that the PW1 in his deposition, admitted that the total extent of land belonging to ancestral property was 2 acre 35 guntas as made in two distinct contexts as per Exhibits D10 and D11 before the Revenue Authority and also in the cross-examination before the Trial Court. The said aspect would makes it clear by looking



into Exhibits P6 and P11. Therefore, I am of the view that the plaintiffs got to an extent of 20 guntas only and not 1 acre 34 guntas as claimed in the suit. Therefore, the arguments advanced by learned senior counsel appearing for appellants cannot be accepted.

25. Insofar as the arguments advanced by learned Senior Counsel appearing for appellants that the First Appellate Court failed to consider the application filed under Order XLI Rule 27 of the Code of Civil Procedure, it is relevant to extract the scope and ambit of the aforementioned provision as laid down by Hon'ble Supreme Court in the case of **UNION OF INDIA vs. IBRAHIM UDDIN AND ANOTHER** reported in (2012) 8 SCC 148 at paragraphs 36 to 48, which reads as under:

"Order 41 Rule 27 CPC

36. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not



entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526], Municipal Corpn. of Greater Bombay v. Lala Pancham [AIR 1965 SC 1008], Soonda Ram v. Rameshwarlal [(1975) 3 SCC 698 : AIR 1975 SC 479] and Syed Abdul Khader v. Rami Reddy [(1979) 2 SCC 601 : AIR 1979 SC 553])

37. *The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co. [(1978) 2 SCC 493 : AIR 1978 SC 798])*

38. *Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it*



to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. (Vide Lala Pancham [AIR 1965 SC 1008])

39. *It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the absence of satisfactory reasons for the non-production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide State of U.P. v. Manbodhan Lal Srivastava [AIR 1957 SC 912] and S. Rajagopal v. C.M. Armugam [AIR 1969 SC 101])*

40. *The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause" within the*



meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

41. *The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.*

42. *Whenever the appellate court admits additional evidence it should record its reasons for doing so (sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see, if the discretion under this Rule has been properly exercised by the court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule.*

43. *The reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate court. A mere reference to the peculiar circumstances of the case, or mere statement*



that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.

44. *It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable, particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision-making. The person who is adversely affected*



must know why his application has been rejected. (Vide State of Orissa v. Dhaniram Luhar [(2004) 5 SCC 568 : (2008) 2 SCC (Cri) 49 : AIR 2004 SC 1794] , State of Uttaranchal v. Sunil Kumar Singh Negi [(2008) 11 SCC 205 : (2008) 2 SCC (L&S) 1093] , Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity [(2010) 3 SCC 732 : AIR 2010 SC 1285] and Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904])

45. In *City Improvement Trust Board v. H. Narayanaiah* [(1976) 4 SCC 9 : AIR 1976 SC 2403] , while dealing with the issue, a three-Judge Bench of this Court held as under : (SCC p. 20, para 28)

"28. ... We are of the opinion that the High Court should have *recorded its reasons* to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence."

(emphasis added)

A similar view has been reiterated by this Court in *Basayya I. Mathad v. Rudrayya S. Mathad* [(2008) 3 SCC 120].

46. A Constitution Bench of this Court in *K. Venkataramiah* [AIR 1963 SC 1526] , while dealing with the same issue held : (AIR p. 1529, para 13)



"13. It is very much to be desired that the courts of appeal should not overlook the provisions of clause (2) of the Rule and should record their reasons for admitting additional evidence. ... The omission to record the reason must therefore be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory."

(emphasis added)

In the said case, the Court after examining the record of the case came to the conclusion that the appeal was heard for a long time and the application for taking additional evidence on record was filed during the final hearing of the appeal. In such a fact situation, the order allowing such application did not vitiate for want of reasons.

47. *Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.*

48. *To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of*



the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage."

26. Following the law declared by the Hon'ble Supreme Court in the above case, I am of the considered opinion that the First Appellate Court has gone into the application filed by the appellants and evaluated the relevancy of the documents sought to be produced by the plaintiffs and rightly rejected the same as per the discussion forthcoming at paragraph 17 of the judgment and decree.

27. In respect of the argument of learned Senior Counsel appearing for appellants that both the Courts below ought to have mould the relief refers to the ability to modify or shape a relief sought for by the plaintiffs, though, the learned



Senior Counsel places reliance on the judgment of Hon'ble Supreme Court in the case of ***J. GANAPATHA AND OTHERS vs. M/S. N. SELVARAJALOU CHETTY TRUST, REP. BY ITS TRUSTEES AND OTHERS*** reported in 2025 SCC OnLine SC 633 and argued that the Courts below ought to have granted relief to the plaintiffs, the aforementioned argument of the learned Senior Counsel cannot be accepted in a civil proceedings, wherein, it is a trite law that, in a suit for declaration of title, the burden always lies on the plaintiffs to make out and establish a clear case for granting the relief of declaration based on the documents and the weakness, if any, of the case set-up by the defendant, would not be a ground to grant relief to the plaintiff [See. (2014)2 SCC 269 and (2019) 6 SCC 82]. The aforementioned aspect would makes it clear that the appellant/plaintiffs herein have not made out a case for interference as they have to succeed on the strength of the documents based on title and therefore, the judgment referred to by the learned counsel appearing for appellants cannot be imported in the facts and circumstances of the case. In that view of the matter, both the courts below have properly appreciated the facts on record in a right perspective and as



the plaintiffs have not produced relevant documents to prove their title as pleaded in the plaint, I am of the view that the substantial question of law framed by this Court, favours the defendant. Therefore, as both the Courts below have concurrently on facts arrived at a conclusion, denying the relief to the plaintiff/appellants based on oral and documentary evidence, the contentions urged by learned Senior Counsel appearing for appellants cannot be accepted. In the result, Regular Second Appeal ***dismissed.***

SD/-
(E.S. INDIRESH)
JUDGE

ARK
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