

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.50 of 2016**

1. Harish Chawda S/o Jayanti Lal Chawda, Aged About 74 Years Through Power Of Attorney Holder Ashok Agrawal, S/o Siya Ram Agrawal, Aged About 50 Years, R/o- Ramsagarpara, Raipur, District- Raipur, (Chhattisgarh),
2. Vishan Chawda, S/o Jayanti Lal Chawda, Aged About 72 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
3. Smt. Dhanlaxmi Chawda,, D/o Late Natwar Lal Chawda, Aged About 51 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
4. Ku. Krishna Chawda, D/o Late Natwar Lal Chawda, Aged About 33 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
5. Ku. Lata Chawda, D/o Late Natwar Lal Chawda, Aged About 30 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
6. Kumar Ram Chawda, S/o Late Natwar Lal Chawda, Aged About 26 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
7. Himmat Lal Chawda, S/o Jayanti Lal Chawda, Aged About 67 Years R/o- Naharpara Raipur, District- Raipur, (Chhattisgarh),
8. Smt. Lekha Chouhan, W/o Narottam Chouhan, Aged About 65 Years R/o- Hariom Regency, Dhanbad, District- Dhanbad, (Jharkhand),..... (Plaintiff)

---- Appellants

Versus

1. Suryakant Rathore S/o Late Murlidhar Rathore, Aged About 60 Years R/o- Station Chowk, Kanha Rain Basera, Near Ganj, Post- Office, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
2. Smt. Sandhya Rathore, Wd./o Late Suresh Kumar Rathore, Aged About 59 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
3. Rubi Rathore, D/o Late Suresh Kumar Rathore, Aged About 30 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
4. Ravindra Pal, S/o Late Suresh Kumar Rathore, Aged About 26 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),

5. Ku. Garima Rathore, D/o Late Suresh Kumar Rathore, Aged About 24 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
6. Satpal, S/o Late Suresh Kumar Rathore, Aged About 23 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
7. Rajdeep Rathore, S/o Late Murlidhar Rathore, Aged About 50 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),
8. Ku. Lata Rathore, D/o Late Murlidhar Rathore, Aged About 60 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),..... (Defendants))
9. Ku. Sima Rathore, D/o Late Murlidhar Rathore, Aged About 39 Years R/o- Near Prabhat Talkies, Ganjpara, Raipur, Tahsil & District- Raipur, (Chhattisgarh),..... (Def. No. 16)
10. Smt. Poonam, W/o Jagdish Rathore, Aged About 62 Years Present R/o- Rathore Chowk, Raipur, District- Raipur, (Chhattisgarh)..... (Def. No. 17)
11. Smt. Shobha, W/o Rajendra Rathore, Aged About 52 Years Present R/o- Rathore Chowk, Raipur, District- Raipur, (Chhattisgarh),..... (Def. No. 18)

---- Respondents

For Appellants	:	Shri Ashish Surana, Advocate
For Respondent 1	:	Shri R.K. Mahobia, Advocate

Respondent No.7, Rajdeep Rathore is present in person.
None for the other respondents though served as per office note.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI

ORDER ON BOARD

17/10/2016

1. With the consent of the parties, the matter is heard finally.
2. Brief facts of the case are that respondent 1/appellant before the appellate Court had filed Civil Appeal No.5A/11 against the judgment and decree dated 31st March, 2010 passed by the 6th Civil Judge, Class-I, Raipur (CG) and prayed that the said judgment and

decree passed by the trial Court dated 31.3.2010 be set aside. The appellate Court vide judgment dated 13.5.2016 remanded back the matter and vide operative part in para 9 observed that though the documentary evidence adduced by the appellant before the appellate Court under the relevant provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 (for short the 'Code') are annexed with the record of the trial Court, but there is no appreciation whether the trial Court had perused the said documents or not, hence, vide para 10 the appellate Court remanded back the matter and directed that the appellant be given an opportunity to plead regarding documents, to adduce evidence and after affording opportunity to both the parties, the matter may be disposed of in accordance with law.

3. The appellants in the present Misc. Appeal would submit that the appellate Court had ignored the provisions of law as provided in Order 41 Rule 27 of the Code regarding production of additional evidence in the appellate Court and passed a slip-short order without complying the provisions regarding production of additional evidence in the appellate Court. Hence, prayed that the judgment dated 13.5.2016 passed by the appellate Court be set aside.

4. Learned counsel for respondent No.1 i.e. appellant in the said Civil Appeal No.5A/2011, fairly submitted that the matter may be remanded back for disposing of the said Civil Appeal in accordance with law along with the provision of Order 41 Rule 27 of the Code as provided.

5. Respondent 7, appearing in person, opposed the instant Misc. Appeal and submitted that the matter is long pending, hence, the order passed by the appellate Court vide judgment dated 13.5.2016 be affirmed.

6. Perused the judgment passed by the appellate Court and also the judgment and decree passed by the trial Court dated 31.3.2010.

7. For relevance, Order 41 Rule 27 of the Code is read as under :

ORDER XL1

APPEALS FROM ORIGINAL DECREES

R.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.

8. From perusal of the said provision of law it appears that there is no speaking order as required under the law whether the trial Court had refused to admit the evidence which ought to have been admitted or despite due diligence the party seeking to produce additional evidence was not aware of existence of those additional evidence and after exercise of due diligence the documents have been filed before the appellate Court for the first time and also the appellate Court failed to appreciate whether it requires any document to be produced with this. As the Court below in a very cryptic manner without applying mind and provisions of law has passed the impugned judgment dated 13.5.2016, it requires interference.

9. Consequently, the Misc. Appeal filed by the appellants is hereby allowed. The judgment of 7th Additional District Judge, Raipur (CG) in Civil Appeal No. 5A/2011 dated 13.5.2016 is hereby set aside. The parties are directed to remain present before the said appellate Court either in person or through their counsel on **15th November, 2016.**

10. The appellate Court is directed to re-hear the matter afresh and dispose of it in accordance with the provisions of Order 41 Rule

27 of the Code along with other provisions of law applicable in the matter.

11. The Misc. Appeal is allowed. Parties may file a copy of this order before the Court below for compliance.

12. Registrar (Judicial) is directed to send the copy of this order to the concerned appellate Court for compliance through usual and fax mode.

13. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE