

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.168/2017

Rajendra s/o Chandan Khandekar ..Vs.. Satyawaranrao s/o Keshavrao Bendle

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. D. R. Galande, Advocate for appellant.

Mr. K. R. Lule, Advocate h/f Mr. N. B. Jawade, Advocate for
respondent.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 15, 2017

Heard Mr. Galande, learned counsel for the
appellant and Mr. Lule, learned counsel for the respondent.

The present appeal is by original defendant. The
respondent filed a suit for removal of encroachment,
possession and for permanent injunction. The summons of
the suit were served upon the present appellant. In
pursuance of the said summons, the appellant-defendant
appeared before the Court below. Opportunities were given
to the appellant to file written statement. However, written
statement was not filed on record and therefore on
04.01.2006 an order was passed that the suit be proceeded
without filing of the written statement. The said order was
never challenged by the appellant.

The trial Court vide judgment and decree dated
14.11.2009 dismissed the suit. Feeling aggrieved thereby
the respondent-plaintiff preferred an appeal. During the
pendency of the appeal, the appellant filed an application
Exh.-20 for permission to file documents on record and to

refer the same in evidence. The appellate Court vide order dated 28.09.2016 observed that the application will be finally decided along with the appeal.

The appellate Court, in paragraph 10 considered the application Exh.-20 and found that the appellant has failed to point out that the appellate Court should exercise its discretion under Order XLI Rule 27 of the CPC. On 01.11.2017, this Court also directed the appellant to produce the application on record of this second appeal. Accordingly, vide pursis dated 14.11.2017 the said application is placed on record. With the assistance of the learned counsel for the appellant, I have gone through the said application. The application is totally vague. There is nothing in the application as to when the documents were applied and there is nothing in the application as to why those documents could not be filed on record earlier during the pendency of the appeal and only at the time of final argument, the said application is required to be filed.

In my view learned appellate Court has also correctly found that the documents purported to be filed under that application are not required to pronounce the judgment. After rejecting the application, the points were formulated by the learned appellate Court. The appellate Court found that the evidence of respondent-plaintiff has gone unchallenged. Even report Exh.-25 prepared by Mr.Mangesh Lote, Taluka Inspector Land Records also shows that the appellant has made encroachment. According to the learned counsel, the appellant has become owner of the suit

property by way of adverse possession. However, no counter claim was filed by the appellant to claim the same. Admittedly, no title documents are filed on record by the appellant to show his ownership nor it could be even pointed out before this Court during the course of arguments.

Learned counsel for the appellant has relied on judgment in the case of *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das*, reported in *AIR 2008 SC 2139* to substantiate his case. There cannot be any dispute in respect of the powers of the appellate Court to permit the parties to adduce and produce the additional evidence by exercising powers under Order XLI Rule 27 (1) (b) of the Code however case has to be made out before the appellate Court to exercise the discretion of the appellate Court. In the present case the appellant has failed to point out any case in his favour.

In that view of the matter, I do not find any reason to interfere with the well reasoned judgment delivered by the learned lower appellate Court. No substantial question of law is involved in the present appeal. The appeal is therefore rejected. No order as to costs.

JUDGE