

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL No. 321 of 2003

1. Pannalal, aged about 43 years, S/o Shri Ishwar Prasad Verma, Occupation- Agriculturist, R/o Village Bod, Tahsil Saaja, District Durg (C.G.)
 2. Dakwar, aged about 4 years, S/o Shri Ishwar Prasad Verma, R/o Village Bod, Tahsil Saaja, District Durg (C.G.)
 3. Jeevanlal, aged about 37 years, S/o Shri Ishwar Prasad Verma, Occupation- Agriculturist, R/o Village Bod, Tahsil Saaja, District Durg (C.G.)
 4. Gajanand, aged about 35 years, S/o Shri Ishwar Prasad Verma, Occupation- Agriculturist, R/o Village Bod, Tahsil Saaja, District Durg (C.G.)
- Appellants/ Plaintiffs**

Versus

1. Ishwarprasad, aged about 34 years, S/o Shri Mohanlal Soni, Occupation – Agriculturist, R/o Village Saaja, Tahsil Saaja, District Durg (C.G.)
2. State Of Madhya Pradesh (Presently Chhattisgarh) Through District Collector, Durg C.G.,

--- Respondents/Defendants

For Appellants	:	Mr. P.K.C. Tiwari, Senior Advocate along with Mr. Shashi Bhushan Tiwari, Advocate
For Respondent No.1	:	Mr. Rajkumar Pali and Mr. Amit Sahu, Advocate.
For Respondent No. 2/State:	:	Mr. Adhiraj Surana, Dy. G. A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

05/12/18

1. The substantial questions of law involved, formulated and to be answered by this Court in this second appeal of appellants/Plaintiffs are as under :-

“1. Whether the lower appellate Court has committed an illegality by dismissing the application for additional evidence before final dismissal of appeal ?

2. Whether the lower appellate Court was justified in not permitting the appellants for adducing additional evidence by way of expert evidence especially when execution of Ex.P/3 agreement was denied by respondent No. 1 as forged ?”

2. The imperative facts required for determination of above–stated substantial questions of law are as under :-

[For the sake of convenience, the parties would be referred hereinafter as per their nomenclature shown in the suit filed before the trial Court]

(2.1) The appellants/plaintiffs' suit for declaration of their title and possession and in alternative for execution of sale deed was dismissed by the trial Court by its impugned judgment and decree dated 02.09.2002 against which they have preferred first appeal under Section 96 of CPC. In the first appeal the appellants also filed an application under Section 151 of CPC for permitting the appellants/plaintiffs for adducing evidence by way of expert evidence stating that the execution of agreement Ex – P/3 was denied by defendant No. 1 as forged. The said application was considered by the trial Court on 13.03.2003 and it was rejected finding no merit and thereafter, the appeal was heard and dismissed by the judgment and decree dated 24.03.2002 against which this second appeal under

Section 100 of CPC has been preferred in which the substantial questions of law has been set out in the opening paragraph of the judgment.

3. Mr. P.K.C. Tiwari, Senior Advocate assisted by Mr. Shashi Bhushan Tiwari, learned counsel appearing for appellants/plaintiffs would submit that the first appellate Court ought to have heard the application for additional evidence while hearing the appeal on merits and it could not have decided the application before hearing the appeal and thereby the first appellate Court has committed gross illegality in rejecting the said application.

4. Per contra, Mr. Raj Kumar Pali and Mr. Amit Sahu, learned counsel appearing for respondent No. 1/ defendant would support the impugned judgment and decree of the first appellate Court.

5. Mr. Adhiraj Surana, learned Deputy Government Advocate appearing for respondent No.2/State submits that State is a formal party in this suit.

6. I have heard learned counsel for the parties, considered their rival submissions made herein above and went through the records with utmost circumspection.

7. It is well stated that the application for additional evidence if any is filed at appeal stage invoking Order 41 Rule 27 of CPC and decision to permit evidence has to be taken by the first appellate

Court while hearing the appeal.

8. The Supreme Court in the decision rendered in **Malayalam Plantations Ltd. v. State of Kerala & Anr.**¹ has held in para-11 as under :-

“11. If any petition is filed under Order 41 Rule 27 in an appeal, it is incumbent on the part of the appellate Court to consider at the time of hearing the appeal on merits so as to find out whether the documents or evidence sought to be adduced have any relevance/bearing in the issues involved. It is trite to observe that under Order 41, Rule 27, additional evidence could be adduced in one of the three situations, namely, (a) whether the trial Court has illegally refused the evidence although it ought to have been permitted; (b) whether the evidence sought to be adduced by the party was not available to it despite the exercise of due diligence; (c) whether additional evidence was necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature. It is equally well-settled that additional evidence cannot be permitted to be adduced so as to fill in the lacunae or to patch up the weak points in the case.”

9. Reverting to the facts of the present case, in the instant case, though the application for additional evidence was not filed under Order 41 Rule 27 CPC but it was filed under Section 151 of CPC which was in fact, an application under Order 41 Rule 27 of CPC and it was incumbent upon the first appellate Court to consider that

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application at the time of hearing of appeal and find out as to whether such additional evidence has any relevance on the issue involved in the appeal but that course has not been resorted to while passing the judgment making the impugned judgment and decree vulnerable and liable to be set aside.

10. As a fallout and consequence of the aforesaid discussion, the impugned judgment and decree as well as the order date 13.02.2003 are hereby set aside. The matter is remitted to the first appellate Court to consider afresh the appeal and application under Order 41 Rule 27 and/or Section 151 of CPC at the time of hearing of appeal on merits and take decision afresh in accordance with law.

11. Consequently, the second appeal is allowed and substantial questions of law are answered in favour of the appellants/plaintiffs and against the defendants.

12. Since, the first appeal was filed on 18.02.2002 the first appellate Court is directed to complete the exercise of hearing of appeal within a period of three months from the date of receipt of copy of this order. Parties are directed to appeal before the first appellate Court on 07.01.2019 and no further notice is directed to be issued to the parties.

13. A decree be drawn up accordingly.

SD/-
(Sanjay K. Agrawal)
Judge