

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.179 OF 2018
IN
CIVIL REVISION APPLICATION (ST.) NO.32724 OF 2017

Shril Ashok Babulal Desarda ... Applicant
In the matter between-
Shril Ashok Babulal Desarda and others ... Applicants
Vs.
Balkrushna Ramakant Divte (decd) through
LRs ... Respondents

Mr. Prafulla B. Shah i/b. Mr. Kayval P. Shah for Applicant.
Mr. S. M. Gorwadkar, Senior Advocate i/b. Mr. Ashok B. Tajane for
Respondents No.1(a) to 1(c).

CORAM : R. G. KETKAR, J.
DATE : MARCH 12, 2018

P.C. :

Heard Mr. Shah, learned Counsel for the applicant and
Mr. Gorwadkar, learned Senior Counsel for respondents No.1(a) to 1(c)
at length.

2. This application is filed under Order XLI, Rule 27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for leading additional evidence. In paragraph 11, it is asserted that after the remand, he was not advised properly and acted as per the directions of the concerned Advocate on record. At that point of time, applicant did not realize that the material which is in his possession and power could have been placed on record in order to convince the appellate Court that he has not sublet the suit property. In paragraph 12, it is asserted that he is 57/58 years old and does not understand the legal nitty gritty.

3. In the case of *Union of India. Vs. Ibrahim Uddin*, (2012) 8 SCC

148, the Apex Court has exhaustively dealt with provisions of Order XLI, Rule 27 of C.P.C. in paragraphs 36 to 49. In paragraph 36, the Apex Court observed that 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. Order XLI, Rule 27 of C.P.C. 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 the Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of 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. In paragraph 39, it was observed that when a party had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot be allowed to produce it in appeal. The inadvertence of the party of realizing the importance of document does not constitute a substantial cause. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

4. Applying the tests laid down in this decision to the facts of the present case, no case is made out for permitting the applicant to adduce additional evidence. Hence, Application fails and the same is dismissed.

(R. G. KETKAR, J.)