

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.260 of 2006**

Ramkumar S/o Lattu Yadav aged about 40 years, R/o Lodhi Para, Arang,
Tehsil Arang, Distt. Raipur (CG)

---- Appellant/Plaintiff

Versus

1. Tijmat Bai Wd/o Late Pyarelal Yadav, aged about 74 years
2. Smt. Krishna Bai W/o Mehattar Yadav, aged about 42 years
3. Kanti Bai W/o Gopal Yadav

All R/o Arang, P.C. No.60, R.I.C. Arang, Tehsil Arang, Distt. Raipur
(CG)

---- Defendants

4. State of Chhattisgarh Through Colletor Raipur (CG)

---- Respondents

For Appellant/Plaintiff	:	Mr.Anant Bajpai, Advocate
For Res.No.1 to 3/Defendants:	:	None present
For Respondent No.4	:	Mr.Matin Siddiqui, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

27.08.2019

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiff is as under:-

“Whether the first appellate Court was justified in firstly affirming the judgment and decree of the trial Court by recording a positive finding and thereafter rejecting the application under Order 6 Rule 17 CPC as well as application under Order 41 Rule 27 CPC ?”

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The plaintiff's suit for declaration of title and permanent injunction was dismissed by the trial Court by the judgment and decree dated 30.11.2004, against which, he preferred first appeal under Section 96 of the CPC before the first appellate Court and also preferred applications under Order 41 Rule 27 CPC and under Order 6 Rule 17 CPC. The first appellate Court firstly considered the entire appeal and came to the conclusion by recording specific finding that the plaintiffs have no case for interference and the judgment and decree of the trial Court is in accordance with law and thereafter took up the application under Order 41 Rule 27 of the CPC and rejected the same holding that it has no merit. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellant/plaintiff, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.
3. Mr. Anant Bajpai, learned counsel for the appellants/plaintiff, would submit that the first appellate Court has committed legal error in firstly deciding the appeal on merits and thereafter deciding the application under Order 41 Rule 27 CPC, whereas after appreciating evidence available on record application under Order 41 Rule 27 CPC ought to have considered simultaneously to find out as to whether additional documents are relevant and necessary for just and proper disposal of the appeal. He relied upon the judgment of the Supreme Court in the matter of Union of India v. Ibrahim Uddin and another¹.
4. None present for respondents No.1 to 3/defendants though served

¹ (2012) 8 SCC 148

through paper publication.

5. I have heard learned counsel for the appellant/plaintiff and considered his rival submissions made hereinabove and also went through the records with utmost circumscription.
6. From perusal of the judgment and decree of the first appellate Court, it would appear that the first appellate Court firstly after appreciating the evidence available on record came to the categorically conclusion that the judgment and decree of the trial Court is strictly in accordance with law and no interference is warranted in the judgment rendered by the trial Court and thereafter took up the application under Order 41 Rule 27 of the CPC, considered the same and dismissed holding no merit.
7. The Supreme Court in the matter of Ibrahim Uddin (supra) held that an application Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved and indicated the procedure to be followed by the first appellate Court *qua* additional evidence sought to be produced and held as under:-

“51. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of

mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

8. Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in Ibrahim Uddin (supra), it is quite vivid that the first appellate Court has failed to consider the application under Order 41 Rule 27 CPC in an appropriate manner, it ought to have considered the said application after appreciating the evidence available on record. It has been rejected after recording finding that the plaintiffs have no case for interference. In fact, additional evidence sought to be produced was not considered after appreciating oral and documentary evidence available on record and thus, the judgment, which was rendered, was held without considering the application for taking additional evidence on record at appropriate stage resulted in serious prejudice to the appellants/plaintiffs.
9. In view of above, the judgment and decree of the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court for hearing the appeal afresh as well as the applications under Order 41 Rule 27 CPC and under Order 6 Rule 17 CPC in the manner indicated by the Supreme Court in Ibrahim Uddin (supra) within three months from the date of receipt of records along with copy of this judgment. All the pleas are left open to the parties. The first substantial question of law is answered in favour of the plaintiffs and against the defendants. In view of matter being remitted to the first appellate Court, second substantial question of law need not be

answered.

10. The second appeal is allowed to the extent indicated hereinabove. Records be sent to the first appellate Court forthwith.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-