

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 2 of 2000

Hanuman Prasad Dewangan S/o Chhedilal, Aged About 40 Years, Near Bharat Paint Mart, Main Road, Juna Bilaspur, Bilaspur Chhattisgarh , Chhattisgarh

---- Appellant

Versus

1. Santram Dewangan (dead) name deleted
2. Kishanlal Alias Annu S/o Santram Aged About 44 Years R/o Juna Bilaspur Tah. And Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
3. Tejram S/o Santram Aged About 42 Years R/o Juna Bilaspur Tah. And Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
4. Gopal S/o Santram Aged About 35 Years R/o Juna Bilaspur Tah. And Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
5. Rajeshkumar Alias Mahesh S/o Santram Aged About 32 Years R/o Juna Bilaspur Tah. And Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
6. Purshottam Kumar S/o Santram Dewangan Aged About 38 Years R/o Juna Bilaspur Tah. And Distt. Bilaspur Chhattisgarh , District : Bilaspur, Chhattisgarh
7. Bansh Gopal S/o Santram Dewangan Aged About 37 Years R/o Pendra Tahsil Pendra Road, Distt. Bilaspur , District : Bilaspur, Chhattisgarh
8. Smt. Kukki W/o Shri Chetan Dewangan R/o Ranigaon Tah. Kota Distt. Bilaspur , District : Bilaspur, Chhattisgarh
9. Smt. Laxmibai D/o Santram Dewangan Aged About 39 Years R/o Hardi Tahsil Janjgir Distt. Janjgir-Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Appellant	:	Shri Anand Kumar Gupta, Advocate
For Respondents	:	Shri Ram Kumar Tiwari, Advocate

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07/08/2019

1. This appeal is directed against the impugned judgment and decree dated 20th July 2000 passed by learned Second Additional District Judge, Bilaspur

in Civil Appeal No.34-A of 2000 whereby and whereunder, learned lower appellate Court has affirmed the judgment and decree passed by the learned trial Court in the suit filed by the appellant/plaintiff and the appeal has been dismissed.

2. This appeal was admitted on following sole substantial question of law:

“Whether the findings of both the Courts below that the Plaintiff has not proved his title over the suit land is perverse ?”

3. The appellant/plaintiff filed a suit seeking recovery of possession of the disputed land on the pleadings inter alia that the land in dispute was purchased by Pooran Sao and Vishal Sao on 15.4.1931 and they also obtained possession. According to plaintiff, Pooran and Vishal effected partition and were in possession of their respective share. Later on, it was pleaded, Vishal sold his half share to Gopal on 12.4.1974 and also delivered possession and, therefore, what was left behind was the share of Pooran alone which continued to remain in possession of the sons of Pooran. The plaintiff is the son of Pooran. According to the plaintiff, respondents/defendants were interfering with his possession and have finally dispossessed the plaintiff and illegally possessed the property in dispute, therefore, a decree for recovery of possession is sought.
4. Defendants denied plaintiff's claim including plaintiff's case that the property was jointly purchased. The defendants' case was that the property in dispute was purchased by Vishal alone from Heeralal and, therefore, the defendants who were successors in interest of Vishal are in possession of the property in dispute.
5. The learned trial Court, after framing issues and allowing the parties to lead oral and documentary evidence, found that the plaintiff has failed to prove its case of property purchased by Pooran and Vishal in the year 1931 and oral evidence in this regard was not found sufficient by learned trial Court to give a decree of declaration. The suit was, therefore, dismissed. The plaintiff then filed appeal and the appeal was also dismissed considering that there is no document of title in support of plaintiff's claim. Thereafter, plaintiff filed this second appeal and along with the second appeal, an application under Order XLI Rule 27 CPC has been filed which has been

replied also.

6. At this stage, learned counsel for the appellant/plaintiff presses his application under Order XLI Rule 27 CPC to bring on record a copy of sale deed dated 15.4.1931. He would submit that during pendency of the appeal, a certified copy of the same was also obtained from the office of the Registrar and that has now been filed. He would submit that the original plaintiff Chhedilal was equally vigilant but with all efforts, he could not procure the aforesaid document and even during pendency of the suit and during pendency of his appeal, but, after Chhedilal died and substituted, his son Hanuman Prasad started inquiring and ultimately found from the record of the Registrar office that long back on 15.4.1931, a sale deed was executed by which, the property was purchased jointly by Pooran and Vishal. According to him, this document was the most important documentary evidence to support the case of the plaintiff and therefore, it being relevant, despite the fact that it could not be produced at the time of filing of the suit in the year 1985, in the interest of justice, plaintiff may be allowed to bring on record the aforesaid evidence.
7. On the other hand, learned counsel for the respondents-defendants opposed the prayer and submits that the present appellant is the son of original plaintiff Chhedilal and this appeal was filed in the year 2000. He would submit that for 15 years, ever since the date of filing of suit, the original plaintiff Chhedilal, though, relied upon said document did not file the same before the trial Court or even before learned lower appellate Court. He would argue that in the application, there is absolutely no material to show what efforts were made by Chhedilal and that he could not get said document. His argument is that at the appellate stage, an attempt is being made to fill in lacuna in the case of the plaintiff. He would submit that if the case of the plaintiff is based on a documentary evidence, it was for the plaintiff to lead the same before the Courts below and in the garb of provision contained under Order XLI Rule 27 CPC, a party cannot be allowed to lead additional evidence at such belated stage so as to fill in a lacuna.
8. Learned counsel appearing for both the parties have cited before this Court, certain judgments. Learned counsel for the appellant-plaintiff relied

upon **Wadi Vs. Amilal & Ors.** (2015) 1 SCC 677 and **Uttaradi Mutt Vs. Raghavendra Swamy Mutt** (2018) 10 SCC 484, whereas learned counsel for the respondent placed reliance in **Satish Kumar Gupta & Ors. Vs. State of Haryana & Ors.** (2017) 4 SCC 760 and **Aditya Narayan Vs. Mst. Keshar** 1994 (II) M.P. Weekly Notes No.75.

9. In the case of **Wadi** (supra), it was held that the provision under Order XLI Rule 27 CPC dealing with production of additional evidence are exception to general rule that the parties are not entitled to produce additional evidence oral or documentary in the appellate Court to clear a lacuna or fill up a gap in a case. It was further observed that if the appellate Court requires any document to be produced from any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. In the subsequent decision, in the case of **Satish Kumar Gupta**(supra), it was held that additional evidence cannot be permitted to fill in lacuna or to patch up the weak points in the case. In that case, on facts, it was observed that it cannot be said that the evidence sought to be adduced was not available despite the exercise of due diligence. In yet another decision, in the case of **Uttaradi Mutt**(supra) again, application in the matter of grant of permission to adduce additional evidence were revisited by the Supreme Court as below :-

“8. This objection need not detain us as we are of the considered opinion that the First Appellate Court would have been within its jurisdiction to permit the party to the proceedings to produce additional evidence before it for full, complete and effectual adjudication of the proceedings. The purport of Order XLI Rule 27 of CPC has been considered by this Court in **Union of India** (supra). The Court adverted to the exposition made in earlier decisions of the Court from paragraphs 36 to 46 and summed up the proposition in paragraphs 47 and 48 as under:

“47. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit

and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage."

The observations made in earlier decision in the case of *Union of India Vs. Ibrahim Uddin and Anr.* (2012) 8 SCC 148, which were noticed in the case of **Uttaradi Mutt** (supra) is that discretion is to be exercised by the Court judicially taking into consideration the relevance of the document in respect of the issue involved in the case and the circumstances under

which, such an evidence could not be led in the Court below and as to whether the appellant had prosecuted his case before the Court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate Court and where a Court comes to the conclusion that document filed comes within fore-corners of the statutory provisions itself, the evidence may be taken on record, however, the Court must record reasons as to on what basis such application has been allowed.

10. In this case, as the plaint reads, the entire case of the plaintiff was based on a sale deed and nothing else. It is not a case where the plaintiff had no notice or knowledge of the sale deed. The plaintiff neither at the time of filing of suit nor during trial, filed any documentary evidence much less, any sale deed in support of his case. There is nothing in the application filed before this Court as to what efforts were made and whether the plaintiff acted with due diligence to obtain copy of sale deed. Even during pendency of first appeal, no documentary evidence in the form of sale deed was filed before the Court.

Fifteen years thereafter, when the second appeal was filed, by that time original plaintiff Chedilal died, that his legal representative has now come with an application seeking production of aforesaid evidence by obtaining certified copy from the office of Registrar. It is thus clear that there is absolutely nothing in the application as to why Chhedilal could not produce the document all through one and half decade when he was prosecuting case before learned trial court and before learned lower appellate Court.

11. In the case of **Aditya Narayan** (supra), the Court having noticed that the plaintiff despite having knowledge of transfer did not produce the sale deed, rejected the application for leading additional evidence.

12. Therefore, at this belated stage, the application of the appellant cannot be allowed to fill in a lacuna by bringing an additional evidence in the form of a sale deed which, right from the day one, was fully within the notice and knowledge of the plaintiff, in the absence of there being any proof of due diligence by the original plaintiff for fifteen years.

The application under Order XLI Rule 27 CPC is, therefore is rejected.

13. The sole substantial question of law as framed by this Court is whether the findings of both the Courts below that the plaintiff has not proved his title over the suit land is perverse ?
14. The plaintiff's case was dependent only on sale deed. The entire evidence led by the plaintiff is only an oral evidence. Both the Courts below have taken into consideration the oral evidence led by both the parties. The plaintiff having failed to lead any clinching evidence in the form of documentary evidence as proof in favour of plaintiff, both the Courts below have recorded concurrent finding of fact which does not suffer from any perversity. Therefore, appellant's case has no merit. Accordingly, the question of law is answered in the manner that finding of the Courts below that plaintiff has not proved his title over the suit land is perverse.
15. Accordingly, the appeal fails and is hereby dismissed. Let an appellate decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen