

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.195 of 2006**

Kalyan Singh, aged about 38 years, son of Dashrath Singh Tanwar,
Cultivator and resident of village Nawagaon (Salkha) P.C. No.7, Tahsil
Kota, District Bilaspur (CG)

---- Appellant/Plaintiff**Versus**

1.A Malikram aged about 30 years, S/o late Rambharos,

1.B. Salikram aged about 27 years, S/o late Rambharos,

All R/o village Nawagaon, Dabripara, Tahsil Kota, District Bilaspur (CG)

2. Ramnath aged about 48 years, son of Janak Ram Nayak,

3. Siyaram aged about 38 years, son of Lachchiram.

All resident of Nawagaon Dabripara, Tahsil Kota, District Bilaspur (CG)

4. State of Chhattisgarh, Through-Collecteor, Bilaspur (CG)

---- Respondents

For Appellant/Plaintiff	: Mr.S.D.Rajas, Advocate
For Res.1(A), 1(B), 3 & 4/Defendants:	Mr.Sanjay Patel, Advocate
For Respondent No.4	: Ms Anjali Singh Chauhan, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment on Board****14.08.2019**

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

“1. Whether the finding of the lower appellate Court relating to the fact that respondents No.1 to 3 have purchased khasra No.945/2 but as bona fide mistake it has been written as khasra No.971/2 in the sale deed Ex.D/3 is perverse ?

2. Whether the first appellate Court is justified in granting

the application under Order 41 Rule 27 of the CPC and thereby admitting a copy of Sanshodhan Panji dated 12.4.65 on record and relying upon the same reversed the judgment and decree of the trial Court without giving an opportunity to adduce rebuttal evidence to the plaintiff?"

[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 filed a suit for permanent injunction stating inter-alia that he is title-holder of the suit land bearing Khasra No.945/2 area 1.80 acres and the defendants are interfering with his peaceful possession, as such, he is entitled for permanent injunction.
3. The defendants filed their written statement and denied the averments made in the plaint stating inter-alia that they have purchased the suit land from Rameshwar Singh by registered sale deed dated 21.5.64 (Ex.D-3), as such, the plaintiff is not entitled for permanent injunction.
4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.8.2003, granted permanent injunction in favour of the plaintiff, which was reversed by the first appellate Court by allowing the application under Order 41 Rule 27 of the CPC and taking Sanshodhan Panji dated 12.4.65 on record. 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 questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

5. Mr.R.S.Rajas, learned counsel for the appellant/plaintiff, would submit that document dated 12.4.65 has already been set-aside by the Sub-Divisional Officer, Bilaspur and therefore, opportunity to adduce evidence in rebuttal ought to have been granted by the first appellate Court while allowing the application under Order 41 Rule 27 of the CPC and while reversing the judgment and decree of the trial Court, as such, the judgment and decree of the first appellate Court deserves to be set aside.
6. On the other hand, Mr.Sanjay Patel, learned counsel for respondents 1(A), 1(B), 2 and 3/defendants, would support the impugned judgment and decree.
7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.
8. The Supreme Court in the matter of **Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and others**¹ has held that once the document is taken on record as additional evidence, opportunity must be given to the other side to produce the evidence in rebuttal if they so desired. Paras 16, 17 and 18 of the report state as under:-

“16. The learned single judge rightly allowed the appellant's plea for production of the original certificates of registration of trade mark as additional evidence because that was simply in the interest of justice and there was sufficient statutory basis for that under clause

¹ (2010) 8 SCC 423

(b) of Order 41 Rule 27. But then the Single Judge seriously erred in proceeding simultaneously to allow the appeal and not giving the respondent-defendants an opportunity to lead evidence in rebuttal of the documents taken in as additional evidence.

17. The Division Bench was again wrong in taking the view that in the facts of the case, the production of additional evidence was not permissible under Order 41 Rule 27. As shown above, the additional documents produced by the appellant were liable to be taken on record as provided under Order 41 Rule 27 (b) in the interest of justice. But it was certainly right in holding that the way the learned Single Judge disposed of the appeal caused serious prejudice to the respondent-defendants. In the facts and circumstances of the case, therefore, the proper course for the Division Bench was to set aside the order of the learned Single Judge without disturbing it insofar as it took the originals of the certificates of registration produced by the appellant on record and to remand the matter to give opportunity to the respondent-defendants to produce evidence in rebuttal if they so desired. We, accordingly, proceed to do so.

18. The judgment and order dated 25-4-2003 passed by the Division Bench is set aside and the matter is remitted to the learned Single Judge to proceed in the appeal from the stage the originals of the registration certificates were taken on record as additional evidence. The learned Single Judge may allow the respondent-defendants to lead any rebuttal evidence or make a limited remand as provided under Order 41 Rule 28.”

9. The above-stated judgment i.e. Shalimar Chemical Works Limited (supra) has recently followed by the Supreme Court in Akhilesh Singh alias Akhileshwar Singh v. Lal Babu Singh and others², in which it has been held that Order 41 Rule 27 of the CPC is silent as to the procedure to be adopted by appellate court after admission of additional evidence and further held that in view of provisions contained in Order 41 Rule 2 of the CPC, when appellate court admits additional evidence, it is necessary for said court to

² (2018) 4 SCC 659

grant an opportunity to other party to lead evidence in rebuttal thereof.

“12. Order 41 Rule 27 CPC, which deals with the provision of additional evidence in Appellate Court, provides for the grounds and circumstances on which the Appellate Court may allow such evidence or documents or witnesses to be examined. Order 41 Rule 27 sub-rule (2) further provides that wherever additional evidence is allowed to be produced by an Appellate Court, the court shall record a reason for its admission. Order 41 Rule 27 is silent as to the procedure to be adopted by the High court after admission of additional evidence. Whether after admission of additional evidence, it is necessary for the Appellate Court to grant opportunity to the other party to lead evidence in rebuttal or to give any opportunity is not expressly provided in Order 41 Rule 27.

14. Order 41 Rule 2 provides that the appellant shall not, except by leave of the court, be allowed to urge any ground in the appeal, which is not set forth in the memorandum of appeal. The proviso to Order 41 Rule 2 engrafts a rule, which obliged the Court to grant a sufficient opportunity to the contesting party, if any new ground is allowed to be urged by another party, which may affect the contesting party. The provision engrafts rule of natural justice and fair play that contesting party should be given opportunity to meet any new ground sought to be urged. When the appellate court admits the additional evidence under Order 41 Rule 27, we fail to see any reason for not following the same course of granting an opportunity to the contesting party, which may be affected by acceptance of additional evidence. In the present case, additional evidence, which were brought on the record were registered sale deeds, which were executed by present appellant and his other co-sharers and what was relied on before the High Court was that the appellant admitted in the sale deeds that the partition has taken place in the family. The main issue in the First Appeal before the High Court was as to whether the finding of the trial court that no partition by metes and bounds has taken place in the family is correct or not. The additional evidence which was admitted has been relied on by the High Court while allowing the appeal. It was in the interest of justice that the High Court ought to have allowed opportunity to the plaintiffs, who were respondents to the first appeal to either lead an evidence in rebuttal or to explain the

alleged admissions as relied on by the defendants. The mere fact that no counter affidavit was filed to the IAs was not decisive. Since IAs having not been admitted, occasion for counter affidavit did not arise at any earlier point of time. The High Court on the same day i.e. 8-3-2017 has allowed the IAs as well as the first appeal. The fact that the contesting respondents to the first appeal, who were the appellant before us were not represented at the time of hearing of the first appeal, was not a reason for not giving opportunity to them to lead evidence in rebuttal.

17. The submission of the learned counsel for the respondents that execution of sale deeds was never denied by the present appellant before the High Court, hence no error has been committed by the High Court in relying on the contents in the sale deed cannot be accepted. Even if, execution of sale deeds was not denied, the appellate court before which any statement in sale deeds is relied on ought to have given an opportunity to lead evidence in rebuttal or to explain the admission. Opportunity to explain the admission contained in the sale deeds was necessary to be given to the contesting party in the facts of the present case. We thus are of the opinion that the High Court erred in simultaneously proceeding with the hearing of the appeal after admitting additional evidence on record. The High Court ought to have given opportunity to the contesting respondents in the first appeal to lead evidence in rebuttal or to explain the alleged admission as contained in the sale deed, which having not been done.....”

- 10.** Reverting to the facts of the present case in light of principle of law laid down by the Supreme Court in the above-stated judgments (supra), it is quite vivid that in the instant case, the defendants produced a copy of Sanshodhan Panji dated 12.4.65, which was relied upon by the first appellate Court at the time of final judgment. Not only this, the first appellate Court took the document on record without making any enquiry and set-aside the judgment and decree of the trial Court and dismissed the suit though the first appellate Court while relying upon the document dated 12.4.65 as additional

evidence did not provide an opportunity to the plaintiff to rebut or to prove additional evidence. The first appellate Court ought to have provided an opportunity to the plaintiff to give additional evidence, which is lacking in this case.

11. In view of above, the impugned judgment and decree passed by the first appellate Court is hereby set aside. The matter is remitted to the first appellate Court to provide an opportunity to the parties to give additional evidence to the extent of document filed by the defendants before the first appellate Court and thereafter to decide the appeal in accordance with law on merits within three months from the date of receipt of certified copy of this order. The first substantial question of law is not answered in light of conclusions reached hereinabove.

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

Sd/-

(Sanjay K.Agrawal)
Judge