

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1738 OF 2017**

IN

SECOND APPEAL NO. 886 OF 2017

Smt. Shamim Banu Nafis Shaikh. ..Appellant.

v/s.

Shri Mahendra Bapurao Ankutkar. ..Respondent.

Mr. Suresh M. Sabrad, advocate for appellant.

Mr. Suresh Dubey, advocate for respondent.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JANUARY 6, 2020.

P. C. :

1 This is an application filed by the appellant seeking leave to place on record the documents annexed to the application and consider the contents therein while deciding the Second Appeal. Learned Counsel submits that the said application has been filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Order 41 Rule 27 of the Code of Civil Procedure, 1908 reads as under :

“Rule 27 Order XLI of Code of Civil Procedure 1908-

27. Production of additional evidence in Appellate Court-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or

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documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or)

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

2 It is pertinent to note that the contents of the agreements or the copy of the agreements or even the reference to the said agreements mentioned in this application were not placed on record before the first court as well as first appellate

court. It is further pertinent to note that there were no submissions made before both the courts below contending that there were subsequent agreement dated 7/5/2003 although the suit was filed on 9/7/2010, the said agreements were in existence and were within the knowledge of the appellant, even at the stage of filing written statement before the trial court or appellate court. Despite that there was no reference to this agreement.

3 Learned Counsel for the respondent submits that in fact, the respondent herein who happened to be the original title holder of the said property had even filed police complaint to that effect that the said agreement purportedly executed between the parties in the year 2003 were sham and bogus since the signatures of the respondent were forged on the said agreement. Section 100 of Code of Civil Procedure, 1908 contemplates as under :

“[100. Second appeal- (1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed exparte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial

question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]”

4 It appears that the present appeal is filed only on facts of the case. In view of this, it is not necessary to consider the application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908.

5 The issue that no submission was made in respect to that agreement is pertinent because it does not fulfill requirement of Order 41 Rule 27 of the Code of Civil Procedure, 1908. The trial court or the appellate court had not refused to accept the said contention nor applications on record. It is in view of the above discussion, the application stands rejected.

[SMT. SADHANA S. JADHAV, J.]