

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO.451 OF 2023
WITH C.A. NO.10795/2023**

**SMT BHAGABAI SANDU JANJAL
VERSUS
ANJANABAI NETAJI DHUMAL**

...
Advocate for Appellants : Mr. Nikam Prashant K.
Advocate for respondent : Mr. P. F. Patni

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CORAM : S. G. MEHARE, J.

DATE : 28.08.2023

PER COURT :

1. Heard the learned counsel for the applicant and the learned counsel for the respondent.
2. Since the learned Appellate Court allowed the production of the additional evidence under order 41 Rule 17 of the Code of Civil Procedure and did not discuss the same, by consent the appeal is heard finally at the admission stage.
3. The question goes to the root of the discussion of the documents which were allowed to be produced by way of additional evidence by the appellate Court. Admittedly, there is no whisper in the judgment of the learned First Appellate Court about the documents which were allowed to be placed in the appeal under order Rule 41 Rule 27 of the

Code of Civil Procedure. The Court has to discuss oral as well as the documentary evidence to arrive at proper conclusion. It was suit for partition. The learned counsel for the applicant has submitted that the compromise deed which was the base to find out the issue of partition has not been considered properly by the learned First Appellate Court.

4. The learned counsel for the respondent has fairly conceded that there is no whisper about the documents placed before the Appellate Court under Order 41 Rule 27 of the Code of Civil Procedure, therefore, question may fall for consideration here what shall be the effect of not whispering the documentary evidence placed on record by the appellant before the First Appellate Court.

5. In view of the apparent defect in impugned judgment and decree passed by learned Extract Joint District Judge, Aurangabad, in Regular Civil Appeal No. 202 of 2017 dated 10.01.2023. It is a partition suit. The partition suit was opened in the year 2007. The parties appear senior citizens. They have priority to get decide the appeal first. Since there is apparent illegality committed by the learned Extra Joint District Judge, Aurangabad, by consent the appeal is remitted to the Extract Joint District Judge, Aurangabad or to the competent District Judge Aurangabad to decide the appeal afresh considering documents

filed on record by the appellant under Order 41 Rule 27 of the Code of Civil Procedure by granting an opportunities to the respective counsel.

6. In above terms the appeal stands disposed of. In view of disposal of Second Appeal, the Civil Application does not survive and same is also disposed of.

7. No order as to costs.

8. The appeal shall be decided within four months from the receipt of this order.

9. Both the parties to appear before the concerned District Judge, Aurangabad on 11th September, 2023.

(S. G. MEHARE)
JUDGE

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