



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

**SECOND APPEAL NO.189/2021**

Sau. Sandhya w/o Yadavrao Bhad,  
aged 47 years, Occ. Household,  
r/o Plot No. 8, Near Boudha Vihar,  
Shiv Shakti Nagar, Udaynagar,  
Ring Road, Nagpur 440 038.

**....APPELLANT**

**...V E R S U S...**

1. Sandesh s/o Subhash Sonare,  
aged 27 years, Occ. c/o K. M. Thaokar  
House Near Peshne Travels, Gadikhana,  
Mahal, Nagpur.
2. Sou. Deepika w/o Rajeshpant Sahane,  
aged 29 years, Occ. Household,  
r/o c/o Rajeshpant Shahane, at post  
Aloda, Tq. Warud, Dist. Amravati.
3. Shri Subhash s/o Maroti Sonare,  
aged 51 years, Occ. Agriculturist,
4. Shri Swapnil s/o Subhash Sonare,  
aged 32 years, Occ. Sevice.

Nos. 3 and 4 r/o c/o K. M. Thaokar,  
Thaokar House, Near Peshna Travels,  
Gadikhana, Mahala, Nagpur.

**...RESPONDENTS**

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Mr. J. J. Chandurkar, Advocate for appellant.  
Mr. N. G. Jetha, Advocate for respondent Nos. 1 to 4.  
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**CORAM:- ANIL L. PANSARE, J.**  
**DATED :- 29.04.2024**

### **ORAL JUDGMENT**

Heard. Mr. J. J. Chandurkar, learned counsel for appellant and Mr. N. G. Jetha, learned counsel for respondent Nos. 1 to 4.

2. The appeal could be disposed of by answering the third substantial question of law, which reads as under:

*“(3) Whether the lower Appellate Court was under mandatory requirement to decide the application filed by the appellant under Order XXLI Rule 27 of the Civil Procedure Code, while deciding the appeal, particularly when the evidence sought to be brought on record went to the root of the matter as it was in respect of the age of the plaintiff no.2 and defendant no.3 on the date of the suit and had a bearing on its tenability?”*

3. The appellant-original defendant had, before the First Appellate Court, filed an application Exh.-30, under Order XLI Rule 27 of the Civil Procedure Code, 1908 (hereinafter referred to as the, “Code”), for recording additional evidence. The Court allowed the application partly, in the sense, production of document was allowed, however, the Court observed that prayer of reading document in evidence will be considered at the time of final hearing of the appeal.

4. Admittedly, this part of the order viz. prayer of reading document in evidence to be considered at the time of final hearing of appeal, has been not considered by the First Appellate Court and in that sense, the learned counsel for the appellant is correct in contending that the application, that was filed by the appellant in terms of Order XLI Rule 27 of the Code, has been not decided.

5. Order XLI Rule 27 provides for production of additional evidence before the First Appellate Court. The First Appellate Court has allowed the application Exh.-30 partly. Once, the documents were allowed to be placed on record, the First Appellate Court was duty-bound to either permit the appellant to lead evidence or to permit reading of document or otherwise in the evidence. The First Appellate Court has, unfortunately, not rendered any finding in the judgment. The First Appellate Court has, therefore, not decided the application in terms of Order XLI Rule 27 of the Code. The substantial question of law is accordingly answered in the affirmative. Consequently, the appeal will have to be remanded back to the First Appellate Court, do decide the issue afresh. The First Appellate Court has already allowed the application partly. Prayer of reading document in evidence will be considered by the First Appellate Court, after giving both the

parties an opportunity of hearing and if the First Appellate Court arrives at a conclusion that the prayer should be allowed, it will take recourse to the provisions of Order XLI Rule 27 of the Code and proceed to decide the appeal, in accordance with law. Accordingly following order.

**ORDER**

- (i) Second Appeal is partly allowed.
- (ii) Judgment and order dated 15.10.2020, passed by District Judge – 2, Amravati in Regular Civil Appeal No.73/2018 is quashed and set aside.
- (iii) The matter is remanded back to the First Appellate Court for fresh consideration, in the light of what has been held in the body of order.
- (iv) The parties shall appear before the First Appellate Court on 11.06.2024 at 11:00 a.m.
- (v) At the request of the learned counsel for the respondents, the Appellate Court is requested to decide the first appeal, as expeditiously as possible but considering his docket.
- (vi) Parties to bear their own costs.

**(Anil L. Pansare, J.)**

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