



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12777 OF 2023

Darbarsingh S/o Premsingh Langri
Age: 82 years, Occu: Business
R/o Bandaghat road, Nanded,
Taluka & District -Nanded, Maharashtra

....Petitioner
(Orgi. Plaintiff)

VERSUS

Kusumtal W/o Nivratti Kagne,
Age: 65 years, Occu: Houseld
R/o Gandhi Statue, Nanded
Taluka & District- Nanded Maharashtra

.....Respondents
(Orig. Defendant)

....
Mr. H. V. Tungar, Advocate for petitioner
Mr. Bipinchandra K. Patil, Advocate for Respondent
....

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 12.06.2025

ORDER :-

. The petitioner/plaintiff impugns common order dated 31.07.2023 passed by learned District Judge-2 Nanded, below Exhibits-28 and 47 in Regular Civil Appeal No.35 of 2009 by which petitioner's prayer seeking permission to adduce additional evidence in the form of original sale deed, original correction deed, 7/12 extracts, mutation entries in relation to land Gut No.51 came to be rejected.

2. Hereinafter the parties are referred by original status in suit for brevity and convenience.

3. The facts giving rise to the present writ petition are summarized as under;

The plaintiff claims that he is owner and possessor of suit land bearing municipal No.10-2-1149 situated in survey No.34 at village Kautha Taluka & District Nanded. According to him, he purchased suit property from one Mahadu Maneji Basvate vide registered sale deed No.1093 dated 08.02.1991. The suit property admeasures 60x60 feet.

4. The plaintiff contends that he obtained NA permission and mutated property in record of Municipal Corporation, Waghala-Nanded. Defendant was trying to disturb peaceful possession of plaintiff although she has no right in the suit property. Hence, plaintiff instituted Regular Civil Suit No.449 of 2021 before the learned Joint Civil Judge, Junior Division at Nanded. Defendant refuted plaintiff's claim contending that the vendor of plaintiff was not having title or possession for the suit property after acquisition of some part for public road and sale deeds executed in the year 1990.

5. Considering rival submissions, learned trial court framed issues, recorded evidence of the parties and finally dismissed the suit. The aggrieved plaintiff filed Regular Civil Appeal No.35 of 2009 before District Court. When the appeal was fixed for final hearing, the plaintiff filed application below exhibits-28 and 47 under Order 41 Rule 27 read

with Section 151 of Civil Procedure Code, Seeking permission to lead additional evidence and produce documents on record. Learned District Judge rejected both the applications under impugned order dated 31.07.2023, observing that the applications do not fit within parameters of Order 41 Rule 27 of Civil Procedure Code. Further the documents sought to be produced pertain to different Gut Number, which is not subject matter of the suit property in plaint; as such no relevancy can be found.

6. Mr. Tungar, learned Advocate appearing for petitioner relies upon judgment of this Court dated 22.07.2019 in case of ***Bilquis Khanum w/o Iqbal Khan & Another Vs. Vitthal S/o Kerba Bhalerao (died), through LR's*** in writ petition No.11226 of 2017 and contends that the appellate court ought to have considered application for production of additional evidence at the time of final hearing of main appeal as per observations of Hon'ble Supreme Court in case of ***Union of India Vs. Ibrahim Uddin & another***, (2012) 8 SCC 148 and ***Jagdish Prasad Patel (Dead) through LR's and another Vs. Shivnath and Others*** (2019) 6 SCC 82. It was obligatory on the part of Appellate Court to consider the prayer for leading additional evidence only when the appeal is taken up for final hearing and evidence on record is appreciated so as to find out, if the additional evidence sought to be

adduced at appellate stage is necessary for pronouncement of judgment. According to Mr. Tungar, Appellate Court could not have decided application at a premature stage without looking into entire evidence of the matter relevancy of additional evidence for effective adjudication of dispute raised in appeal. He would further contend that out of four documents sought to be tendered by way of additional evidence two were certified copies of public record and could have been admitted in evidence without formal proof.

7. Per contra, Mr. Patil, learned Advocate appearing for respondent justifies the impugned order contending that learned appellate court exercised jurisdiction within parameters of law. He submits that petitioner pressed application for leading additional evidence and same has been considered and decided on merit by applying rigours of Rule 27 of Order 41.

8. Having considered submissions advanced, it can be observed that petitioner-plaintiff wants to lead additional evidence i.e., sale deed dated 08.02.1991 and correction deed dated 25.11.1994 and mutation entries relating to aforesaid transactions by way of additional evidence. Apparently, all these documents were within knowledge of plaintiff and was in custody, as rightly observed by the appellate court. Plaintiff made reference to those documents in Regular Civil Suit No.515

of 2007 instituted by him before Civil Judge, Senior Division at Nanded. The perusal of application for additional evidence employees only reason that appellant recently changed his Advocate, who noticed that non-production of sale deed dated 08.02.1991 and correction deed dated 25.11.1994 was inadvertent error. Further appellant was not conversant with the legal proceedings and was not advised to do so.

9. Rule 27 of Order 41 reads thus;

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 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.

Aforesaid provision are recently considered by Supreme Court in case of ***Sanjay Kumar Singh Vs. The State of Jharkhand (2022) 7 SCC 247*** and in case of ***A. Andisamy Chettiar Vs. A. Subburaj Chettiar (2015) 17 SCC 713***, wherein paragraph No.12 reads thus;

“12. From the opening words of sub-rule (1) of Rule 27, quoted above, it is clear that the parties are not entitled to produce additional evidence whether oral or documentary in the appellate court, but for the three situations mentioned above. The parties are not allowed to fill the lacunae at the appellate stage. It is against the spirit of the Code to allow a party to adduce additional evidence without fulfilment of either of the three conditions mentioned in Rule 27. In the case at hand, no application was moved before the trial court seeking scientific examination of the document (Exh. A-4), nor can it be said that the plaintiff with due diligence could not have moved such an application to get proved the documents relied upon by him. Now, it is to be seen whether the third condition i.e., one contained in clause (b) of sub-rule (1) of Rule 27 is fulfilled or not.”

10. In light of aforesaid observations, case of petitioner needs to be considered. It is not the case of petitioner that notwithstanding the exercise of due diligence, such evidence was not within his knowledge

or it could not be produced by him at the time when decree was passed. The petitioner could not demonstrate any substantial cause for non production of such evidence before the trial court. The rigours implied under Rule 27 cannot be lightly brushed aside or ignored. The appellate court is justified in refusing to entertain prayers observing that the reasons as contemplated under Rule 27 are not available to permit production of additional evidence at appellate stage. One more reason implied in the impugned order is that Gut number of suit land and property described in sale deeds and mutation record sought to be produced by way of additional evidence is totally different and would not be relevant for rendering decision in the suit.

11. This court specifically called upon learned Advocate appearing for petitioner to show pleadings as regards to sale deed and mutation entries sought to be produced by way of additional evidence. However, he admits that from paragraph No.2 of plaint such reference can not be found. Plaintiff raised his claim as to ownership of property admeasuring 66x66 feet, only on the basis of sale deed dated 08.02.1991 bearing serial no.1093 and there was no reference of sale deed bearing serial No.1093 dated 08.02.1991 or correction deed in the pleadings.

12. In that view of the matter, this Court finds no reason to interfere in the impugned order in exercise of writ jurisdiction under Article 227 of Constitution of India. In result, writ petition stands dismissed.

[S. G. CHAPALGAONKAR, J.]

HRJadhav