



IN THE HIGH COURT OF BOMBAY AT GOA
APPEAL FROM ORDER NO.1226 OF 2024-FILING
WITH
CIVIL APPLICATION NO. 1227 OF 2024-FILING
IN
APPEAL FROM ORDER NO.1226 OF 2024-FILING

The Mazania of the temple of
Shree Mahalaxmi and its Affiliates,
Of Panaji, Through its Attorney
Shri. Mahesh H. Khandolkar,
Son of Shri. Harishchandra
Khandolkar, 55 years of age,
Indian national, With office at
Shree Mahalaxmi temple,
Dada Vaidya road, Panaji-Goa.

..... **Applicant.**

VS

1. Shri. Arvind Gajanan Shenvi Ghatkar,
Son of late Gajanan Shenvi Ghatkar,
Major of age, and his wife
2. Mrs. Smita Arvind Ghatkar,
Wife of Shri. Arvind Gajanan
Shenvi Ghatkar
Major of age,
Both r/o Kamat Retreat,
Durgawadi, Taleigao-Goa.

.....**Respondents.**

Mr S. D. Lotlikar, Senior Advocate with Mr Shriram Polle, Advocate
for the Applicant.
Mr Ajit Kantak, Advocate for Respondent no.2.

WITH
WRIT PETITION NO. 51 OF 2025

1. SHRI ARVIND GAJANAN
SHENVI GHATKAR son of
Late Gajanan S. S. Ghatkar
major, aged 67 years.
2. SMT. SMITA ARVIND
GHATKAR w/o Shri Arvind
G. S. Ghatkar, major
aged 63 years , married
both r/o Kamat Retreat,
Durgawadi, Taleigao,
Tiswadi-Goa.

.... Petitioners.

V/s

THE MAZANIA OF THE
TEMPLE OF SHRI
MAHALAXMI AND ITS
AFFILIATES OF PANAJI
Having address at Dada
Vaidya Road , Panaji ,
Tiswadi Goa. Represented
by its Attorney,
AFFILIATES OF PANAJI,
REP. BY ITS ATTORNEY

.... Respondent.

Mr Ajit Kantak, Advocate for Petitioners.
Mr S. D. Lotlikar, Senior Advocate with Mr Shriram Polle, Advocate
for the Respondents.

CORAM:- NIVEDITA P. MEHTA, J.

RESERVED ON:- 4th September 2025.

PRONOUNCED ON :- 17th October 2025

JUDGMENT

Heard. **Admit.**

2. This common order shall dispose of the writ petition filed against order dated 5/12/2024 passed by the learned Ad hoc District Judge-2 (FTC 2), Panaji, in Regular Civil Appeal 46/2021 and Appeal from Order against judgment and order dated 18/03/2024 passed by the learned Ad hoc District Judge-2(FTC 2), Panaji, in Regular Civil Appeal 46/2021.

3. By way of order dated 18/03/2024, the learned Ad hoc District Judge-2 had quashed and set aside the judgment and decree passed by the learned trial Court in the civil suit and had ordered the trial Court to record additional evidence and decide the suit afresh.

4. By way of order dated 05/12/2024 the learned Ad hoc District Judge-2 had partly allowed the Civil Review Application against the order dated 18/03/2024. The Civil Review was filed by the petitioners,

who were the defendants in the original suit, only to the extent that upon remand the trial Court, after taking additional evidence, shall also give an opportunity to the defendants to cross-examine the witness of the plaintiff producing the additional evidence. The relief sought in the review application, in respect of PW3, the expert, was rejected.

5. The petitioners in Writ Petition No. 51 of 2025 are the defendants in the main suit and the Appellant in the Appeal from order No. 1226/2024 is the plaintiff.

6. Parties shall be referred to as plaintiff and defendants as they were referred to in the suit before the trial Court.

7. The brief facts of the case are that a suit was filed by the plaintiff namely 'Mazania of the temple of Mahalaxmi and its affiliates of Panaji' against the defendants namely Shri Arvind Ghatkar and his wife Smt. Smitha Ghatkar seeking a prayer of declaration in respect of a well water plot existing in the suit property. It is their case that the plaintiff is the owner of a well water plot which is the suit property and

the defendants are unauthorisedly utilising the same for commercial purpose. Hence, the suit for declaration and injunction. It is the case of the defendants that the well water plot belongs to them and has been shown in the survey records as belonging to defendant no. 1 with easementary rights to the temple.

8. Based on the pleadings of the parties issues were framed.

9. After the completion of cross-examination of PW4, the respondent who was the plaintiff in the trial Court, filed an application for production of documents which was allowed by order dated 25/9/2019 and to produce these documents PW1-Yogesh Dempo was recalled. PW1 tendered the additional documents in evidence and was cross-examined. On 28/06/2021 the defendants filed an application to recall expert witness Prazares Gonsalves who was examined as PW3 on the ground that the plaintiff was permitted to produce additional documents subsequent to the completion of the deposition of PW3 Prazares Gonsalves and that the defendants did not have an opportunity to cross-examine PW3 on the documents produced subsequent to the completion of his deposition.

10. The defendants therefore prayed for recall of PW3 Prazares Gonsalves for further cross-examination in respect of additional documents exhibited. This application was dismissed.

11. The defendants then filed a Writ Petition bearing No.256 of 2021 which was also dismissed. However, this Court had given liberty to the parties to challenge this order at the stage of appeal in case the matter was decided against them.

12. The plaintiff in the main suit sought to produce some further documents which application was again rejected by the trial Court. They filed Writ Petition No.1713 of 2021 against the order before this Court and this Court vide order dated 31/8/2021 disposed of the said Writ Petition and permitted production of documents by recalling PW1 and PW3. This Court, however, in view of submission of the respondent made it clear that the cross-examination in respect of the said documents shall be restricted only to the said documents. The civil Court after recording the evidence and after hearing the arguments, decreed the suit by its judgment and order dated 08/11/2021.

13. Aggrieved by the said order, the defendants herein filed an appeal assailing the said judgment and decree before the District Court. The defendants also filed an application under Order XLI, Rule 28 of CPC.

14. By judgment and order dated 8/3/2024 the learned District Judge-2, FTC, Panaji, allowed the appeal and set aside the judgment and decree of the civil Court and remanded the matter back to the trial Court and directed the trial Court to take further additional evidence as desired to be produced by the plaintiff and also permitted the defendants to cross-examine PW3 on the additional documents produced by the respondent vide application at Ext.72.

15. Aggrieved by this judgment and order dated 18.03.2024 of remand passed by the learned Ad hoc District Judge FTC-2 Panaji, the plaintiff has filed this Appeal from order before this Court.

16. Meanwhile the defendants, preferred a Civil Review Application dated 12/04/2024 drawing the attention of the learned Ad hoc District

Judge, FTC-2 Panaji to the certain aspects that are required to be reviewed. The said application for review was partly allowed.

17. Aggrieved by the order dated 05/12/2024 in respect of the relief sought regarding the further cross-examination of PW3, the expert examined by the plaintiff, the present Writ Petition is filed by the defendants.

18. It is argued by the learned Senior Counsel for the plaintiff that mere allowing an application for production of documents does not warrant setting aside findings of the trial Court, more particularly because those documents are public documents and they could have been read in evidence directly. It is his argument that a wholesale remand is *de hors* Order XLI Rules 23, 23A, 25 and 28 of the CPC and for that reason the order of the trial Court is liable to be quashed and set aside.

19. He has relied upon the judgment of the Madhya Pradesh High Court in Omprakash Balwant Singh Vs. **Ashok s/o Chokhelal Mali**, in

Misc. Appeal No.2152 of 2021 (MP). In this case, the plaintiff had instituted a suit against the defendants for declaration. The suit of the plaintiff was decreed and an appeal was filed against that order by the defendants. The defendants filed an application for production of documents before the Appellate Court which application was allowed and one of the issues framed by trial Court was also deleted. Thereafter setting aside the judgment and decree passed by trial Court, the matter was remanded back to permit the parties to lead evidence in respect of additional documents taken on record and the newly framed issues and thereafter decide the matter afresh. This order was challenged before Madhya Pradesh High Court. It is contended that the learned first Appellate Court did not follow proper procedure and hence it was prayed that the order be quashed.

20. In ***Omprakash Balwant Singh*** (*supra*), the Madhya Pradesh High Court considered the provisions under Order XLI Rules 24, 25, and 26 of the CPC. The High Court observed that, in view of Rule 28, the Appellate Court is vested with the power either to take additional evidence itself or to direct the trial Court to record such evidence and

transmit the same to the Appellate Court for consideration. It could have specified the points to which the additional evidence was to be confined. Only for the reason that additional documents had been taken on record, it did not necessitate setting aside the judgment and decree passed by the trial Court and remanding the matter back to it with liberty to both the parties to adduce additional evidence and also to lead oral evidence in that regard. The provisions of Rules 28 and 29 have wholly been omitted to be taken into consideration by the Appellate Court. Merely because additional documents had been taken on record, wholesale remand to the trial Court after setting aside its judgment and decree was wholly unwarranted.

21. Further reliance is placed by learned Senior Counsel Mr. Lotlikar upon the judgment in ***Sanjay Kumar Singh Vs. State of Jharkhand, (2022) 7 SCC 247*** wherein it was held that “*It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in the appeal. However, as an exception, Order 41, Rule 27 CPC enables the appellate court to take additional evidence in exceptional*

circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in Order 41, Rule 27 CPC are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has direct and important bearing on the main issue in the suit and the interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41, Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.”

22. Further reliance is placed on the judgment in ***H.P. Vedavyasachya Vs. Shivashankara and another, (2009) 8 SCC 231***, wherein it was held that “when an application for adducing additional evidence is allowed the appellate court has two options

open to it. It may record the evidence itself or it may direct the trial court to do so.”

23. In this case, a suit filed by the plaintiff was decreed, an appeal was preferred by the defendants against the said order. An application was made to adduce further evidence in terms of Order XLI, Rule 27 of CPC. The said application was allowed and it was ordered by the first Appellate Court that the trial Court shall dispose of the case on merits in so far as ‘*B schedule property*’ is concerned. In the case, the Hon'ble Supreme Court held that when an application for adducing additional evidence is allowed, the Appellate Court has two options to it. It may itself record evidence or it may direct the trial Court to do so and for the reasons aforesaid the Hon'ble Supreme Court held that the High Court could not have directed the trial Court to dispose of the suit after taking evidence, order of such remand can only be made in terms of Order 41, Rule 23(a) of Order 41, Rule 25 of the CPC. None of these provisions were found applicable in this case.

24. Lastly, on the aspect of remand, reliance is placed on the judgment in the case of ***Sirajudeen v. Zeenath 2023 Live law 145,***

wherein it was held that the reversal has to be based on cogent reasons and for that matter, adverting to and dealing with the reasons that had prevailed with the trial Court remains a *sine qua non*. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of Order XLI of the CPC.”

25. Per contra, the learned Counsel for the applicant has relied upon the case in Uttaradi Mutt Vs. ***Raghvendra Swamy Mutt, (2018) 10 SCC 484***. In this case, the three judgments of the Hon’ble Supreme Court has laid down the procedure that is to be followed in case the Appellate Court permits a party to lead additional evidence. In this case, it was held in paragraphs 14, 15 and 16 thus :

“14. Indeed, the provision as applicable to the State of Karnataka is not limited to the decree disposing of the suit on a preliminary point but also where the appellate court in reversing or setting aside the decree under appeal considers it necessary, in the interest of justice, to remand the case,. Notably the Karnataka amendment has been introduced vide the Karnataka Gazette Entry dated 5-11-1959. The effect of that provision is reionforced by Central Amendment Act 104 of 1976 which introduced Rule 23-A. The said Rule 23-A reads thus:

“23-A. Remand in other cases - Where the Court from whose decree an appeal is preferred has disposed of the

case otherwise than on a preliminary point and the decree is reversed in appeal and a re-trial is considered necessary, the appellate court shall have the powers as it has under Rule 23.”

15. We say so because under Rule 23 of CPC, the appellate court could remand the case before it where the court from whose decree an appeal was preferred, had disposed of the suit upon a preliminary point and that decree was reversed in appeal. Rule 23-A deals with other (residuary) category of cases to be remanded by the appellate court in an appeal against a decree which has been disposed of otherwise than on a preliminary point. While exercising such discretion, the appellate court is duty bound to keep in mind Rules 25 and 26 of Order 41 CPC, which reads thus:

“25. Where appellate court may frame issue and refer them for trial to court whose decree appealed from- Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor within such time as may be fixed by the appellate court or extended by it from time to time.

26. Findings and evidence to be put on record: Objections to finding- (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time fixed by the appellate court, present a memorandum of objections to any finding.

(2) Determination of appeal-After the expiration of the period so fixed for presenting such memorandum the appellate court shall proceed to determine the appeal”.

16. In other words, there are two options available to the appellate court. First, it may record the evidence itself by permitting the parties to produce evidence before it as per Rule 27 of Order 41 or direct the court from whose decree the appeal under consideration has arisen, to do so.”

26. The judgment of **H.P. Vedavyasachya** (supra) was distinguished in the said case.

27. The common thread that runs through the judgments that are cited above revolves around interpretation of Order XLI, Rules 23, 23-A, 24, 25, 26, 27 and 28 of the C.P.C.

28. The learned trial Court was of the view that since the issue involves identification of the property and the documents sought to be produced fulfil the criteria laid down in Order XLI Rule 27 of CPC, hence the application is liable to be allowed.

29. However, after giving a finding that the application for production of additional documents is liable to be allowed, the learned

trial Court has not given any finding in terms of Order XLI, Rule 23, Rule 23A, Rule 25 of CPC, as the case may be, as to why the Court felt it fit to remand the case, instead of directing the recourse available under Order XLI, Rule 28 of CPC. Allowing an application for production of documents in appeal, cannot be a ground to remand the matter, without giving appropriate reasons, in terms of Order XLI Rule 23, 23A or 25 of CPC as may be applicable.

30. Before remand, a reasoned order to that effect is imperative. Even the judgment of ***Uttaradi Mutt*** (supra) cited by the learned counsel for defendants, requires the Appellate Court to record reasons why the parties should be relegated to the trial Court. Therefore, considering the fact that there are no reasons been cited by the learned Ad hoc District Judge, before ordering remand, it would be apt to quash and set aside the impugned judgment and order.

31. Now as regards the Writ Petition filed by the defendants. it is argued by the learned counsel for the defendants that in terms of Order VII, Rule 14(1) of CPC, an opportunity has to be given to the

defendants to cross-examine a witness in respect of all documents produced and relied upon in evidence. If these documents are subsequently produced, the cross of the defendants cannot be restricted only to the documents that are subsequently produced. Opportunity to cross-examine should be in respect of all documents in the file and even a document which is not in the file and that it is unfair to restrict the cross only to the documents produced on record.

32. Before going into the merits of the arguments raised and undertaking discussions on the judgments that are being cited by the parties, I shall first consider the chronology of orders that are passed in the matter. The first relevant order is the order dated 28/07/2021 passed in Writ Petition No.256/2021. In this Writ Petition, the defendants were aggrieved by the order dated 6/7/2021 by which the learned trial Court had dismissed the defendants' application seeking recall of PW3 Prazares Gonsalves. This writ petition was dismissed giving liberty to the defendants to challenge the same in appeal in case the matter is decided against them.

33. The second relevant order is the order passed in Regular Civil Appeal No.46 of 2021 which order permitted the defendants to cross-examine the PW3 in respect of the documents produced vide application at Exhibit 72.

34. There are two aspects to this order. First, that the learned Ad-hoc District Judge had remanded the matter back as it was of the view that the additional documents ought to be produced in appeal are germane to decide the real issues in controversy. The learned trial Court had also allowed the request of the defendants to cross-examine PW3 on the additional documents produced by the plaintiff vide application at Exbt.72 which was the subject matter on the liberty given in Writ Petition No.256 of 2021. The trial Court gave a clear finding that the identification of the property and consequently the well referred in the title document of the plaintiff is the core issue in the present suit.

35. What the learned Ad hoc District Judge had not done was to provide liberty to the defendants to cross-examine the witness of the

plaintiff in respect of the additional evidence that he was permitted to produce vide order dated 18/3/2024. This error was rectified by way of impugned order dated 5/12/2024 and liberty was given to the defendants to cross-examine the witness of the respondent in respect of the additional evidence produced by him upon remand. The bone of contention in the present petition pertains to the rejection of relief in respect of cross-examination of PW3, Prazares Gonsalves in respect of all documents in the file.

36. It is contended by the learned senior counsel for the respondent that the documents sought to be produced in appeal were public documents and were not at all relevant to the report of PW3 Prazares Gonsalves and therefore, there was no reason and occasion to permit the petitioners to cross-examine PW3 at all. In any case, there is no such prayer in respect of cross-examination of PW3 in respect of documents produced in appeal. Further the plaintiff too has assailed the order dated 18/3/2024, permitting the defendants to cross-examine PW3 in respect of the documents at Exhibit 72 stating that the recall cannot be permitted merely for the purpose of cross-examining a

witness. Pw3 has not referred to the documents at Exhibit 72 in his report. Thus it is argued that the learned Ad hoc District Judge has rightly disallowed the application for review to that extent.

37. In this regard, I have noted that the documents that were sought to be produced in appeal were not relied at the first instance alongwith the plaint. Order VII, Rule 14 of CPC imposes an obligation on the plaintiffs to enter the documents in a list and present it alongwith the plaint and in case any document is sought to be produced subsequently, the leave of the Court has to be sought. These documents being records of inventory proceedings cannot be called public documents and its effect will have to be tested by way of cross examination.

38. What then happens when the Court grants leave to produce these documents in appeal, and opportunity is given to the witness to tender such documents in evidence. As per Section 138 of the Indian Evidence Act, re-examination shall be directed to explanation of matters referred in cross-examination and the adverse party may further cross-

examine the witness upon that matter. The power to cross-examine a recalled witness is implicit.

39. The learned Ad hoc District Judge had rightly held that the documents sought to be produced in appeal are not private documents and they will have to be tendered in evidence.

40. In the instant case, only PW1 is sought to be recalled to produce additional documents, therefore, obviously by way of the impugned order dated 5.12.2024, leave was granted to the defendants to cross-examine PW1.

41. Now the question arises whether in the context of the above facts, was it imperative to permit the defendants to cross-examine PW3, Parzares Gonsalves who is an expert, in respect of the documents that would be tendered by PW1.

42. The learned Ad hoc District Judge has permitted the defendants to cross-examine PW3 in respect of the additional documents

produced by the plaintiff at Exbt.72. The learned Ad hoc District Judge was of the view that the issue involves identification of the property, therefore, the petitioners ought to have been given a fair opportunity to cross-examine PW3 in respect of the additional documents produced by the respondent at Exbt.72 in the trial Court file.

43. The documents at Exhibit 72 are documents of inscription and description, Deed of Declaration and Succession Jaiaxrybai Ghatkar which were exhibited at Exhibit 90 and Exhibit 91. Whereas the documents which were sought to be produced in appeal are order dated 29.11.1975 passed by the Inquiry Officer, City Survey and record of inventory proceedings 20/87 instituted upon the death of Jayashibai Purushottam Sinai Ghatkar. In the application for production of documents before the appellate Court, it is pleaded by the plaintiff that “right to the well existing at the rear side bearing chalta No. 118A” was mischievously added in the inventory proceedings by the defendants.

44. PW3 Prazares Gonsalves, in his report dated 13/02/2019 has referred to a Deed of Relinquishment dated 19.7.2022 and has

identified the well. In his cross-examination, a question was asked to him whether he has prepared any superimposition plan and he has answered in the negative. The learned Court of Civil Judge Junior Division, Panaji at Paras 38 to 41 of his judgement, has held that the plaintiff has with the help of the report of the surveyor proved the existence of the well. This being the case the evidence of the surveyor is most crucial in the matter.

45. If the plaintiff had relied upon these documents at the first instance when the plaint was filed, the defendants would have had the opportunity to cross-examine PW3, who was later in chronology in respect of all the documents that are produced by the plaintiff and tendered by PW1 in his evidence. The plaintiff has chosen to produce the documents in piecemeal. In case the defendants, are deprived of the right to cross-examine the expert in respect of these additional documents, particularly when the Court is satisfied that the evidence of the expert is relevant to determine the real issues in controversy, it will be against the tenets of the rule of cross- examination.

46. The apprehension raised by the learned senior counsel is that in the guise of cross-examination of PW3, the petitioner will re-open the evidence in respect of the matters that are already recorded. This can be monitored by the learned trial Court by applying relevant principles of law relating to cross-examination and withdrawal of admissions. Permitting the plaintiff to produce additional documents in appeal, but restricting the cross-examination does not serve the purpose of justice. The learned District Court in review ought to have considered this aspect.

47. Now coming to the judgments that have been cited in the present case.

48. Reliance is placed on the case of Bagai Construction Vs. **Gupta Building Material Stones, (2013) 14 SCC 1**, wherein it was held that : *“Order 18, Rule 17- recall of witness- scope of object of – held it enable courts to clarify any doubts regarding evidence led by parties. It is not meant to fill up omissions in already adduced evidence. Power conferred upon court under Order 18, Rule 17 can be used*

either on application by parties or suo moto but it has to be used sparingly in an appropriate case. Witness cannot be recalled and re-examined merely on the ground that no prejudice would be caused to the other side. Power thereunder if used in a routine manner would defeat the very purpose of amendments to Civil Procedure Code. Where application is bona fide and leading of additional evidence would clarify doubts of the court and earlier non production was for valid reasons, then recalling of witness is permissible.”

49. In ***Bagai Construction*** (supra), the Court was satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. In fact, the materials placed showed that the plaintiff had filed both the applications after more than sufficient opportunity had been granted to it to prove his case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff had not placed those bills on record. The Court was thus satisfied that the plaintiff came forward with such an application only to avoid the final judgment against him. Such course is not permissible even with the aid

of Section 151 Code of Civil Procedure. Here plaintiff wanted to recall his witness to clarify certain aspects of evidence.

50. On the aspect of recall of witness the learned senior counsel for plaintiff has relied on case of Balkrishna Shivappa Shetty v. ***Mahesh Nenshi Bhakta, 2003 (3) MhLJ 47***, wherein it was held that “*The provisions of law contained in Order 18 Rule 17 of the Civil Procedure Code provide that the court may, at any stage of the suit, recall any witness who has been examined and may, subject to law of evidence for the time being in force, put such question to him as the court thinks fit. The said provision of law apparently does not deal with the subject of allowing the parties to cross-examine the witness after such witness being recalled in exercise of powers thereunder. In other words, the provisions contained in Order 18 Rule 17 of the Civil Procedure Code do not empower the Court to recall the witness for the purpose of cross- examination by either of the parties though it does permit recall of witnesses for the purpose of examination by the court itself.*”

51. In ***Balkrishna Shivappa Shetty*** (*supra*) defendant no. 1 was sought to be recalled for the purpose of cross-examination as certain documents came to be produced on record in the form of Exhibit-5 while the defendant no. 2 was in the witness box and who was examined after the conclusion of the testimony of the defendant no. 1. It is not in dispute that the documents which were placed on record in the form of Exhibit-5 were not relied upon by the parties and they came on record in the course of cross-examination of the defendant no. 2 without there being any objection being raised for the production of such documents by the respondent nos. 1 and 3. The Court was satisfied that there was nothing on record to disclose any justification for failure on the part of the respondent nos. 1 to 3 for not raising any objection for the production of such documents in the course of cross-examination of the defendant no. 2, inspite of the fact that the said documents were neither relied upon by the defendant no. 2 nor were produced for the inspection of the respondent nos. 1 to 3 prior to the production of the said documents on record. It was thus held that mere lapse on the part of the party or his counsel would not entitle the party to seek the assistance of the Court to get the witness recalled and cross-

examined at the sweet will of such a party.

52. In the case at hand, it is the plaintiff who has filed an application for production of documents two times. At the first instance, before the trial Court and for the second time in appeal. The witness has been technically recalled by the plaintiff to produce those documents. In these circumstances, the defendants cannot be deprived of their right of cross-examination. Thus ***Bagai Construction*** (supra) and ***Balkrishna Shivappa Shetty*** (supra) therefore are factually distinguishable.

53. Although the identity of the property per se may not be in dispute, however the question whether the suit water well, is a part of the title documents of the plaintiff or a part of the title documents of the defendants becomes germane. Here the evidence of the expert is crucial. To that extent the order of the learned Ad hoc District Judge, FTC-2 permitting the cross-examination of PW3 in respect of the documents at Exhibit 72 cannot be faulted.

54. Now the question arises whether the Ad hoc District Judge FTC-2, by order dated 05.12.2024, had erred in denying opportunity to the plaintiff for cross-examination of PW3 in respect of documents produced in appeal. As noted above, the order of remand dated 18.03.2024 is liable to be quashed and set aside. The learned Ad hoc District Judge would have to hear the parties and decide further recourse upon allowing the application for production of documents under Order XLI Rule 27 CPC.

55. In view of the same, the question whether defendants would be entitled to cross-examine the PW3 in respect of all documents in the file or the documents produced before the Appellate Court can be kept open for the learned Ad hoc District Judge to decide.

56. Thus the order dated 18.03.2024 is quashed and set aside only to the extent that the Learned Ad hoc District Judge Margao, has quashed and set aside the entire judgement and decree dated 08.11.2021 and has remanded the case. The order allowing the application for production of documents filed by the plaintiff and allowing the

defendants to cross-examine PW3 Prazares Gonsalves, in respect of documents at Exhibit 72 is sustained.

57. The learned Ad hoc District Judge FTC-2 Panaji, shall re-hear the parties and determine whether a remand is necessitated in the present case by recording reasons in writing in terms of Order XLI of CPC. Consequently, the issue relating to cross-examination of PW3 in respect of all documents in the file or the documents produced before the appellate Court is kept open.

58. Rule stands discharged in view of the order passed in the appeal.

NIVEDITA P.MEHTA, J.