



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.509 OF 2019

APPELLANTS

(Ori. Defendants)
On R.A.

- :-** 1) Tryambak Vinayak Deshpande,
Aged 67 years, Occu: Agriculturist,
R/o Rohinnkhed, Tah. Motala, Dist.
Buldana.
- 2) Sau. Usha Prakash Joshi
Aged 60 years, Occu: Household,
R/o Ner Tah. Jamner, Dist. Jalgaon
Khandesh.

..VERSUS..

RESPONDENTS

(Ori. Plaintiffs)
On R.A.

- :-** 1) Mohan Chandrashekhar Kully
Aged 65 years, Occu: Agriculture,
R/o Rohinkhed, Tah. Motala, Dist.
Buldana.
- 2) Subhash Chandrashekhar Kully
Aged 62 years, Occu: Agriculturist,
R/o Chaitanyawadi, Buldana, Tah. & Dist.
Buldana.

Mr A.A. Dhawas, Advocate for Appellants.
Mr A.B. Mirza, Advocate for the Respondent.

CORAM : ROHIT W. JOSHI, JJ.

DATE : 23/09/2025

ORAL JUDGMENT :

1. Heard.

2. The following substantial question of law was framed in the appeal vide order dated 15.9.2025 :

“Whether the appeal could be decided without deciding the application filed by the appellant under Order 41, Rule 27 of the Code of Civil Procedure, seeking permission to lead additional evidence?”

3. At the joint request of the parties, the appeal was fixed for final hearing on the above said substantial question of law. The appeal is taken up for final hearing with the consent of parties.

4. It is not in dispute that the present appellants who are the original defendants have filed an application for permission to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908, before the First Appellate Court. It is also not in dispute that the appeal is decided on merits without deciding the said application. It is well settled that an appeal cannot be decided on merits without deciding the application for permission to lead additional evidence filed with the appeal. The learned First Appellate Court has committed error in not deciding the application for permission to lead additional evidence.

5. In view of the aforesaid, without expressing any opinion on the merits of the matter, I pass the following order :-

- i) The appeal is **allowed**.
- ii) The judgment and decree dated 05.03.2019, passed by the learned District Judge-1, Malkapur, Dist. Buldana, in Regular Civil Appeal No.203 of 2012, is quashed and set aside.
- iii) The appeal is remitted to the learned First Appellate Court to decide the same afresh in accordance with law.
- iv) The parties are directed to appear before the learned First Appellate Court on **13.10.2025**. Parties to note that separate notice for appearance will not be issued.
- v) Having regard to the fact that, the appeal pertains to the year 2012, the learned First Appellate Court is directed to decide the appeal as expeditiously as possible and in any case, before **31.03.2026**.

- vi) The objection of the learned Advocate for the respondents/original plaintiffs that the pleadings of the appellants/original defendants are silent with respect to the document in question and therefore, the application filed under Order 41 Rule 27 of the Code of Civil Procedure, is liable to be rejected is kept open.

Rule is made absolute in above terms. No order as to costs.

(ROHIT W. JOSHI, J.)

C.L. Dhakate