

AD – 6
Ct No.16
21.05.2026
(SSS)

SAT 101 of 2026
with
CAN 1 of 2026

The Indian Oil Corporation Limited
Vs.
Ambe Plywoods Private Limited

Mr. Probal Mukherjee, Snr. Adv.,
Mr. Partha Pratim Roy,
Mr. Shounak Mukhopadhyay,
Mr. Amit Mehoria,
Ms. Paromita Banerjee,
Mr. Sayan Dey,
Mr. Yash Mahmia, Advs.
.....For the appellant.

Mr. Krishnaraj Thaker, Snr. Adv.,
Mr. Suddhasatva Banerjee,
Mr. Soumabho Ghose,
Mr. Sagnik Majumdar,
Ms. Shreya Ghosh Dastidar,
Mr. Aurin Chakraborty, Advs.
.....For the respondent.

1. The present second appeal has been preferred against a judgment of affirmance whereby both the Courts decreed an eviction suit filed by the plaintiff/respondent against the appellant on the ground of expiry of the lease granted to the appellant by efflux of time, within the contemplation of Section 111 of the Transfer of Property Act.

2. Learned senior counsel appearing for the appellant cites *Malayalam Plantations Limited vs. State of Kerala and Anr.*, reported at (2010) 13 SCC 487, to argue that despite two applications for production of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure (CPC) having been filed by the plaintiff/appellant before the First Appellate Court, those were not even adverted to on merits by the learned First Appellate Judge. The First Appellate Court proceeded to decide the appeal on merits and thereafter to consequentially dismiss the Order XLI Rule 27 applications, which is contrary to law. In support of such contention, learned Senior counsel reiterates that in *Malayalam Plantations* (supra), the Hon'ble Supreme Court observed that it was not inclined to go into the validity or acceptability of the documents/materials filed by both sides before the High Court and that Order XLI CPC speaks about procedure in respect of disposal of appeals from the original decree. Upon quoting Rule 27 thereof, it was observed that in view of the said provision, when an application for reception of additional evidence under Order XLI Rule 27 CPC was filed by the parties, it was the duty of the High Court to deal with the same on merits.

3. It was further observed in the said judgment that if an application is filed under Order XLI Rule 27 in an appeal, it is incumbent on the part of the appellate court to consider at the time of hearing the appeal on merits whether the documents or evidence sought to be adduced have any relevance/bearing on the issues involved.

4. Learned senior counsel further argues that in one of the said additional evidence applications, the appellant had sought to rely on certain documents indicating that an adjudication as to whether the suit property is a thika tenancy was pending before the Thika Controller. In the other, a notification under the West Bengal Town and Country (Planning and Development) Act, 1979 was sought to be brought on record, from which it would be evident that a property which is being used as a retail outlet cannot be converted to some other use. It is submitted that the latter is relevant to impress upon the court that the respondent cannot utilize the suit property for any other purpose than its current user as a retail outlet.

5. Upon a careful consideration of the proposition laid down in *Malayalam Plantations* (supra), we find that the plinth of such proposition is consideration by the court as to whether the

documents or evidence sought to be brought on record as additional evidence would have any relevance/bearing on the issues involved.

6. It is also well-settled that merely due to a procedural irregularity, an appellate court does not interfere with the decision of either a first appellate court or the suit court. Section 99 of the CPC provides *inter alia* that no decree shall be reversed or substantially varied on account of any error, defect or irregularity in any proceedings not affecting the merits of the case or the jurisdiction of the court.

7. Taken in conjunction, the ratio laid down in *Malayalam Plantations* (supra) and the provision of Section 99 of the CPC unerringly indicate towards the relevance/bearing of the additional evidence sought to be brought on record to the merits of the *lis*.

8. Proceeding on such premise, even if the applications for production of additional evidence which were filed by the appellant before the First Appellate Court were to be considered on merits, we do not find any germane bearing of the documents sought to be brought on record to the present litigation. Proceeding on the premise that there is a pending adjudication before the Thika Controller as regards whether the suit property is

a thika property, mere pendency of such proceeding cannot automatically confer status on the property either as a thika property or otherwise.

9. The courts below considered the stand taken by the appellant as to the property being a thika tenancy independently and came to the conclusion that since it comprises of admittedly pucca structures, it does not come within the purview of a “thika tenancy”.

10. Hence, the production of such additional evidence would not enure to any additional benefit to the appellant, even if allowed.

11. Insofar as the notification under the West Bengal Town and Country (Planning and Development) Act, 1979 sought to be brought on record, the same also does not also have any germane bearing on the present adjudication, since we cannot anticipate what use the property would be put to once the eviction decree is executed and the plaintiff/respondent takes over possession. Moreover, it would be premature to consider, within the limited matrix of the eviction suit, the future user to which the decree holder might put the property to.

12. Hence, even applying the test laid down in *Malayalam Plantations* (supra), the procedural

irregularity harped upon by the appellant would not alter the outcome of the litigation and/or affect the merits of the same.

13. Hence, in view of the efflux of time of the lease tenure having been factually found by both the courts below, in a second appeal, we are loath to interfere with such concurrent finding of fact. Even otherwise, no substantial question of law has been raised.

14. Hence, SAT 101 of 2026 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure.

15. Consequentially, CAN 1 of 2026 is also dismissed.

16. There will be no order as to costs.

17. We make it clear that the above findings were arrived at only for the purpose of adjudication of the present second appeal and shall not *per se* have any bearing on the merits of any other pending litigation.

18. Urgent Photostat copies of this order, if applied for, be issued to the parties upon compliance with due formalities.

(Sabyasachi Bhattacharyya, J.)

(Biswaroop Chowdhury, J.)