IN THE HIGH COURT OF JHARKHAND, RANCHI

C.M.P. No. 241 of 2026

1. Parwati **Kuer [died on 07.09.2026 and as such deleted vide order dated 28.10.2026],** aged – 90 years, wife of Late Chandradeo Yadav.
2. Keshwar Yadav, aged 71 years
3. Kameshwar Yadav, aged 42 years.

   Nos. 2 and 3 are sons of Late Chandradeo Yadav.
4. Devmaniya Devi, aged 60 years.
5. Anarwa Devi, aged 40 years
6. Halkaniya Devi, aged 45 years.

   Nos. 4 to 6 are daughters of Late Chandradeo Yadav.
7. Bishundeo Yadav, aged 70 years, son of Late Munarika Yadav

   All – Residents of Village – Kachanpur, P.O. and P.S. – Chhattarpur, District – Palamau.

... ... Defendants/ Appellants/ Petitioners.

-- Versus --

1. Mahendra Yadav
2. Surendra Yadav

   Nos. 1 and 2 are sons of Late Sita Yadav
3. Sarju Yadav
4. Ganesh Yadav.

   3 and 4 are sons of Late Aliyar Yadav
5. Surajdeo Yadav
6. Mohan Yadav

   Nos. 5 and 6 are sons of Late Mahabir Yadav.
7. Kalawati Devi @ Kaloiya Devi, Wife of Late Naresh Yadav.

8. Satendra Yadav

9. Vinay Yadav

9 and 10 are – sons of Late Naresh Yadav.

All – Residents of Village – Kachanpur, P.O. and P.S. – Chhattarpur, District – Palamau, Jharkhand.

10. Sabita Devi, wife of Sanjay Yadav, Daughter of Late Naresh Yadav, Resident of – Village – Tenudih, P.O. and P.S. – Chhattarpur, District – Palamau, Jharkhand.

11. Sheeta Devi, wife of Mukesh Yadav, Daughter of Late Naresh Yadav, Resident of – Village – Nawajaipur, P.O. and P.S. – Nawajaipur, District – Palamau, Jharkhand.

12. Lilawati Kumari (Minor), being represented through her mother and natural guardian namely Kalawati Devi @ Kaloiya Devi and Daughter of Late Naresh Yadav, Resident of – Village – Kachanpur, P.O. and P.S. – Chhatarpur, District – Palamau, Jharkhand.

.... Plaintiffs/Respondents/Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Kundan Kumar Ambastha, Advocate
Mr. Ayush Raj, Advocate
For the Respondents : Mr. Prashant Kumar Rahul, Advocate

*06/**05.11.2026*** Heard the parties.

2. This Civil Miscellaneous Petition filed has been filed under Article 227 of the Constitution of India for quashing/setting aside the order dated 16.07.2025, passed by the Principal District Judge, Palamau in Misc. Civil Application No. 07 of 2025, arising out of Civil Appeal No. 15 of 2025, contained in Annexure-5 of the petition, by

which the petition filed by the defendants/appellants under Order XLI Rule 27 CPC for tendering the documents i.e. Zamindari Rent, Government Rent Receipt, Certified Copy of Cadastral Survey Khatiyan, Revisional Survey Khatiyan, Challan and Chaukidari Rent Receipts by way of additional evidence has been rejected by the lower appellate court.

3. Mr. Kundan Kumar Ambastha, learned counsel for the petitioners submits that in paragraph-6 of the written statement filed in Partition Suit No. 32 of 2011, the defendant has already stated that Suraj Kuari Devi, on receiving due SALAMI from Munarik, had settled the land of Khata No. 86 in his favour in or about the year 1934 and subsequently issued Zamindari rent receipt in his name following by delivery of possession and on vesting under B.L.R. Act. Manarik, the original settlee, was recognized tenant in possession by the State and in recognition and confirmation his tenancy rent receipt granted in his name.

4. Learned counsel for the petitioners further submits that although the statements and documents were already on record but they could not be marked and exhibited because the person namely Bishundeo Yadav (petitioner no. 7), who used to take pains to look after the case before the trial court, had suffered paralytic attack and as such, he could not make Pairvi before the trial court and the trial court, without properly considering the materials on record, decreed the suit filed by the plaintiffs vide Judgment and decree dated 31.07.2024.

5. Learned counsel further submits that against the Judgment and decree dated 31.07.2024, the petitioners preferred Civil Appeal No. 15 of 2025 before the learned Principal District Judge, Palamau. During pendency of the said appeal, the petitioners filed an application under Order XLI Rule 27 CPC, which was

registered as Misc. Civil Application No. 07 of 2025 praying therein the documents i.e. Zamindari Rent, Government Rent Receipt, Certified Copy of Cadastral Survey Khatiyan, Revisional Survey Khatiyan, Challan and Chaukidari Rent Receipts be marked as Exhibits as the same could not be marked due to paralytic attack of petitioner no. 7 who used to look after the case. Learned counsel submits that the Principal District Judge, Palamau, vide order dated 16.07.2025, rejected the petition filed by the petitioners under Order XLI, Rule 27 of CPC for tendering the documents. Learned counsel submits that the correct time of deciding the petition of Order XLI Rule 27 of CPC is at the time of final hearing of the appeal.

6. To buttress his arguments, Mr. Kundan Kumar Ambastha, learned counsel relies upon the Judgment rendered in the case of ***Union of India Vs. Ibrahim Uddin and Another*** reported in (***2012) 8 SCC 148*** and further refers to paragraph-42 thereof, which reads as under:

> *"41. Thus, from the above, it is crystal clear that application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/ inexecutable and is liable to be ignored.*
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> *In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred*

to hereinabove, the order dated 28.4.1999 is just to be ignored."

Relying upon the above Judgment, learned counsel submits that thus it has been held that the documents produced are necessary or not necessary, the same should have been decided at the time of deciding the main appeal on merits.

7. Learned counsel further places reliance upon the Judgment rendered in the case of ***Govind Singh and Others Vs. Union of India and others*** reported in ***2026 Supreme (SC) 227*** and refers para-11.7 thereof, which reads as under:

"11.7 The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the Trial Court. The Appellate Court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the Appellate court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below."

Referring the above Judgment, learned counsel submits that the matter may kindly be remanded to the learned first appellate Court to consider the same at the time of hearing.

8. Learned counsel further places reliance upon the Judgment rendered in the case of ***Iqbal Ahmed (Dead) by Lrs. And Another Vs. Abdul Shukoor*** reported in ***2025 LiveLaw (SC) 831*** and refers paragraphs-8 and 9 thereof, which reads as under:

"8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the

additional evidence that is proposed to be brought on record. In absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence as it may not be permissible to take such evidence into consideration. Useful reference in this regard can be made to the decisions in ***Bachhaj Nahar Vs. Nilima Mandal and Anr., AIR 2009 SC 1103*** *and* ***Union of India Vs. Ibrahim Uddin and Anr., (2012) 8 SCC 148.*** *Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out that such permission can be granted. In absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.*

9. As we have found that the application for leading additional evidence has been considered by the Appellate Court without examining the aspect as to whether the additional evidence proposed to be led was in consonance with the pleadings of the defendant and whether such case had been set up by him coupled with the fact that the additional evidence taken on record has weighed with it while reversing the decree, the matter requires reconsideration by the High Court. Since we find that the matter requires re-consideration at the hands of the High Court afresh, we have not gone into the aspect of delay in deciding the appeal by the High Court as was urged on behalf of the appellants."

Relying upon the above Judgment, learned counsel submits that the learned first appellate court erred in dismissing the petition filed by the petitioners. It is a clear case where the necessary documents could not be marked and exhibited as the

circumstance was beyond their control, which has already been discussed hereinabove.

9. Mr. Kundan Kumar Ambastha, learned counsel submits that in the facts and circumstances of the case and in view of the Judgments relied upon by him, this matter may be remanded back to the first appellate court with a direction to consider the petition at the time of final hearing of the matter.

10. Mr. Prashant Kumar Rahul, learned counsel appearing on behalf of the opposite parties vehemently opposes the arguments advanced by the learned counsel for the petitioners and submits that the court below has passed the order in right perspective and due diligence has not been shown by the petitioner. There is no illegality or any infirmity in the impugned order and this petition is fit to be dismissed. To buttress his arguments, learned counsel places reliance upon the Judgment rendered in the case of ***State of Karnataka and another Vs. K.C. Subramanya and others*** reported in ***(2014) 13 SCC 468*** and refers paragraphs 4, 5 and 6 thereof, which reads as under:

> *"4. However, we do not feel impressed with this argument and deem it fit to reject it in view of Order 41 Rule 27(1)(aa) which clearly states as follows:*
>
> *"27.*
>
> *(1)(a) * * **
>
> *(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) * * *"*
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> *On perusal of this provision, it is unambiguously*

clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.

6. In the instant matter, the appellants are a public authority and have sought to produce a road map which, it is unbelievable, was not within the knowledge of the appellants indicating a road to the disputed land. Therefore, the rejection of the application of the appellants to rely on the said map has rightly not been entertained at the stage of first appeal. The impugned order thus does not suffer from legal infirmity so as to interfere with the same."

11. Relying upon the above Judgment, learned counsel submits that there is no due diligence shown by the petitioner and in view thereof, learned court below has correctly passed the order. No interference is required and this petition is fit to be dismissed.

12. Having heard learned counsel for the parties and after going through the written statement filed by the petitioner, particularly paragraph-6 of the written statement filed in Partition Suit No. 32 of 2011, it appears that there is specific statement made by the petitioners in the written statement but due to paralytic attack to Bishundeo Yadav (petitioner no. 7), who used to take pains to look after the case before the trial court, proper Pairvi could not be made before the trial court and the documents could not be marked as

exhibits. If the specific statements are there in the written statement, the documents can be considered as has already been held by the Hon'ble Supreme Court in the case of ***Gobind Singh and others (Supra)***. The Hon'ble Supreme Court has held in two judgments relied by the counsel of the petitioner that the said petition is required to be decided at the time of hearing of the case. The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order XLI Rule 27 of the CPC enables the appellate court to take additional evidence in exceptional circumstances. Further, appellate court may permit additional evidence if the conditions laid down under Order XLI Rule 27 of the 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 is sought to be adduced, removes the cloud the doubt over the case and the evidence has a direct and important bearing on the main issue in the suit in the interest of justice clearly renders it imperative that it may be allowed to be permitted on record. In that background, such application may be allowed.

13. The principle is well settled with regard to allowing or rejecting the petition under Order XLI Rule 27 of the CPC. The Court is in agreement with the arguments of learned counsel appearing for the opposite party that due diligence has to be shown and that is the ratio of the Hon'ble Supreme Court in the case of ***State of Karnataka and another Vs. K.C. Subramanya and others*** reported in ***(2014) 13 SCC 468*** on which reliance has been placed by learned counsel for the opposite parties. However, if the statements are there in the written statement, it is the discretion of the Court at the time of delivery of Judgment to close cloud in the case to consider as to whether those documents are necessary or

not and that can be decided at the time of final hearing of appeal.

14. Having heard learned counsel for the parties and considering facts and circumstances discussed hereinabove and Judgments relied upon by the parties, the order dated 16.07.2025, passed by the Principal District Judge, Palamau in Misc. Civil Application No. 07 of 2025, arising out of Civil Appeal No. 15 of 2025, is hereby set aside. Consequently, the petition filed by the defendants/appellants under Order XLI Rule 27 CPC for tendering the documents i.e. Zamindari Rent, Government Rent Receipt, Certified Copy of Cadastral Survey Khatiyan, Revisional Survey Khatiyan, Challan and Chaukidari Rent Receipts by way of additional evidence, is hereby restored to the file of first appellate court. The first appellate court will decide the said application at the time of the final hearing of the case.

15. This petition stands allowed.

16. Pending I.As. also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dated : 05.11.2026

RC/Uploaded on ……/11/2026 /**A.F.R.**