IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 1080 of 2026

Arjun Kumar Prasad, son of late Badri Mahato, aged about 64 years, resident of Near Middle School, Barmasia, P.O. and P.S. Dhanbad, District-Dhanbad, Jharkhand ..... … Petitioner

Versus

Phulkumari Devi, wife of Panchanan Mahato, resident of village Chikun, P.O. Tantri, P.S. Topchanchi, District-Dhanbad, Jharkhand presently residing at village Duhatand (Via Barmasia), District-Dhanbad ..... … Opposite Party

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CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :Mr. P.K. Mukhopadhyay, Advocate
For the Opp. Party :

02/ 04.11.2026: This civil miscellaneous petition has been filed under Section 227 of the Constitution of India for setting aside the order dated 13.02.2026 passed by the learned District Judge-1, Dhanbad in Misc. Civil Application No. 32 of 2025 Civil Application No. 130 of 2020 arising out of Civil Appeal No. 130 of 2020 whereby the petition filed by the petitioner under section XLI Rule 27 read with Order XVI Rule 1 of the Code of Civil Procedure Code has been rejected.

2. Mr. P.K. Mukhopadhyay, learned counsel for the petitioner submits that the petitioner was defendant no.1 in Title Suit No. 137 of 2012 in which the petitioner/defendant no.1 pleaded that father of the defendant no.2 executed an agreement for sale on 21.07.1987 Exhibit-A in favour of Badri Mahato, father of defendant no.1 and Nand Lal Mahato took advance money of Rs. 11,000/- from the father of the defendant no.1 and delivery of possession was given to the father of the defendant no.1 but the Exhibit-7 which is report of Central Forensic Science Laboratory, Kolkata the said agreement dated 21.07.1987 there has been manipulation in plot number and name of Nand Lal Mahato and others contained by manipulating the plot number 144 to 145 and in this background objection was made however, the learned trial court has held that the said agreement is not proved by the defendants. He next submits that Title Suit No. 137 of 2012 was decided by learned Civil Judge (Senior Division) VII by the judgment dated 31.07.2018 which has been decreed in favour of the plaintiff. He submits that aggrieved with this judgment, the petitioner/defendant preferred Civil Appeal No. 130 of 2020 before the learned District Judge, Dhanbad and in course of proceeding before the appellate Court the petitioner filed a petition under

Order XLI Rule 27 read with Order XVI Rule 1 of the Code of Civil Procedure Code which has been rejected by the learned Court by order dated 13.02.2026. He submits that the learned court has erroneously rejected the petition without appreciating the spirit of Order XLI Rule 27 read with Order XVI Rule 1 of Code of Civil Procedure. He further submits though the said document was marked as Exhibit-7 however the prayer to call the FSL expert to prove expert opinion has been rejected by the learned court and in view of that the impugned order may kindly be set aside.

3. On perusal of the impugned order it transpires that the learned court has given cogent finding in rejecting the said petition filed by the petitioner herein. The learned court has found that during trial the defendant no.1 has filed an agreement to sale dated 21.07.1987 (Exhibit-A) in support of his claim and as some overwriting was there in the said document hence it was sent to the Central Forensic Science Laboratory to examine and after examining the said document, the Central Forensic Science Laboratory submitted its report which has been marked as Exhibit-7. The learned court has further found that defendant no.1 neither raised any objection in sending the said document for the expert opinion nor raised any objection in marking it exhibit which is evident from the order dated 15.02.2016 and 29.01.2018 of the learned trial court. It is also noted in the impugned order that from the ordersheet it has come to the knowledge of the Court that the case was running for defence evidence as well as argument for almost six months but no such prayer was made by the defendant no.1 before the learned trial court. The learned court has further found that no reason has been disclosed in the said petition to entertain Order XLI Rule 27 of the C.P.C at that stage.

4. There are three ingredients for allowing or rejecting the said petition under Order XLI, Rule 27 of the CPC and those are :-

Firstly, where the court which passed the decree has refused to admit evidence which ought to have been admitted.

Secondly, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed and,

Thirdly, where the appellate court itself requires any document to be

produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.

5. 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 of 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.

6. Order XLI Rule 27 of the CPC has been recently considered by the Hon'ble Supreme Court in ***Gobind Singh & Others Vs. Union of India & Others*** reported in ***(2026) 4 SCC 130*** wherein para 26 it has been held as under

> *"26. 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."*

7. In view of the above facts, reasons and analysis and further considering that due diligence has not been shown in filing the said petition. The parameters of Order XLI Rule 27 of the CPC is not fulfilled. As such this petition is hereby dismissed. Pending I.A. if any, stands disposed of.

(Sanjay Kumar Dwivedi, J.)

Dt. 04.11.2026
Satyarthi-