



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.17 OF 2025

Smt. Kamal W/o Ramkumar Hatwar .Vs. Natthu S/o Ratiram Karemore and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Chandekar, Advocate for appellant.

Ms. Smita Deshpande, Advocate for respondent No.1.

Mr. Kaustubh Deogade, Advocate for respondent Nos.3 to 6.

CORAM : ROHIT W. JOSHI, J.

DATE : 20/02/2026

1. Respondent No.2 though served on merit, has not appeared.
2. The appeal came to be admitted vide order dated 08.05.2025 on two second substantial questions of law as enumerated therein. The second substantial question of law pertains to failure on the part of the learned First Appellate Court to decide the application for permission to lead additional evidence filed by the appellant/original plaintiff under Order XLI Rule 27 of the Code of Civil Procedure, 1908.
3. The learned Advocate for the respondents does not dispute that the said application was not decided.
4. It is well settled that if an appeal is decided on merits without deciding an application under Order XLI Rule 27 of the CPC, the judgment and decree passed by the learned Appellate Court is not sustainable.

5. In view of the aforesaid, Second Appeal is **allowed** by answering the substantial question of law No.2 in favour of the appellant and against the respondents.

6. Second Appeal is **partly allowed** by quashing and setting aside judgment and decree dated 21.12.2024 passed by the learned District Judge-1, Bhandara, in Regular Civil Appeal No.34 of 2020. The matter is remitted to the learned First Appellate Court for deciding the same afresh along with the application for permission to lead additional evidence filed by the original plaintiff by keeping all questions open.

7. Parties to appear before the learned First Appellate Court on **16.03.2026**.

8. Appellant and respondent Nos.1 and 3 to 6 are put to notice that separate notice for appearance will not be issued. The learned First Appellate Court to issue fresh notice to respondent No.2.

9. Having regard to the fact that the parties are litigating for a period of 22 years since the year 2004, the learned First Appellate Court is requested to decide the appeal expeditiously and, if possible, before **31.08.2026**.

10. Since the appeal is partly allowed by remanding the matter, court fees be refunded to the appellant in accordance with law.

(ROHIT W. JOSHI, J.)