



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

**SECOND APPEAL NO.311 OF 2025**

**APPELLANT**  
Original plaintiff on R.A.

**:-** Bhaurao s/o Maroti Elkewar (dead)  
Through his legal heir  
Chandrakant S/o Bhaurao Elkewar  
aged about 55 years, Occ. Private R/O  
House no.249, Plot No.230, Mehar  
Baba Marg Gokulpeth Nagpur, Tah.  
and Distt. Nagpur

**..VERSUS..**

**RESPONDENTS**  
original defendant on R.A.

**:-** 1. Yogesh S/o Krishnamurty Tripathi,  
aged about 69 years, Occ. Retired  
2. Dr. Brijesh s/o Krishnamurty Tripathi,  
aged about Major years, Occ. Dentist,  
Both are R/o 230, West High Court  
Road, Gokulpeth, Nagpur, Tq. and Dist.  
Nagpur.

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Mr. J. K. Matala, Advocate for Appellant.  
Mr. R. M. Sharma, Advocate for the Respondents.

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**CORAM** : **ROHIT W. JOSHI, J.**

**DATE** : **13.02.2026**

**J U D G M E N T :**

- 1) Heard.
- 2) With consent of the learned advocates for the

parties, following substantial question of law is framed:-

*I. Whether the judgment and decree passed by the learned First Appellate Court is sustainable since the appeal is decided without adjudicating the application for permission to lead additional evidence filed by the appellant ?*

3) At the behest of both the learned advocates, the aforesaid substantial question of law is being decided finally forthwith.

4) The present appeal is preferred by original plaintiff in Regular Civil Suit No.1528 of 1994, which came to be dismissed by the learned 22<sup>nd</sup> Joint Civil Judge, Junior Division, Nagpur vide judgment and decree dated 30.01.2017, which has been confirmed by the learned District Judge-4, Nagpur vide judgment and decree dated 28.01.2025 passed in Regular Civil Appeal No.163 of 2017.

5) The plaintiff is in occupation of suit property as tenant of one Ramabai Dixit. The defendant claims that she is daughter of the said Ramabai Dixit and that late Ramabai Dixit has also executed Will dated 14.08.1957 in her favour.

The plaintiff filed the suit seeking a declaration that defendant is not legal heir of Ramabai Dixit.

6) As stated above, the aforesaid suit was dismissed by the learned Trial Court and appeal also met the same fate. It is undisputed that in the appeal the appellant had filed certain documents alongwith an application seeking permission to lead additional evidence, which remained undecided. The documents are in the nature of school record and other records of defendants. It is well settled that when an application for leading additional evidence is filed in an appeal, the judgment passed in the appeal without deciding such application is unsustainable.

7) In view of the aforesaid, the Second Appeal is partly **allowed** by answering the substantial question of law in favour of the appellant/original plaintiff.

8) Second Appeal is allowed in the following terms:-

- i. Judgment and decree dated 28.01.2025 passed by the learned District Judge-4, Nagpur in Regular Civil Appeal No.163 of 2017 is quashed and set aside.
- ii. The appeal is remitted to the learned First

Appellate Court for deciding the same afresh alongwith application (Exhibit 30) seeking permission to lead additional evidence.

**iii.** Parties shall appear before the learned First Appellate Court on **23.02.2026**.

**iv.** Parties to note that separate notice for appearance will not be issued.

**v.** Having regard to the fact that the suit is pertaining to the year 1994, the learned First Appellate Court is requested to decide the appeal expeditiously and preferably before **30.06.2026**.

**vi.** All contentions of the respondent/defendant including that the documents are not related to her are kept open.

(ROHIT W. JOSHI, J.)

*Tanmay..*