IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 210 of 2023
Date of Decision: 18.11.2026

Man Singh & another ...Appellants.

Versus

Raghu Dass & others ...Respondents.

Coram
Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the appellants : Mr. Bimal Gupta, Senior Advocate with Mr. Trigun Negi, Advocate.

For the respondents: Mr. Bhupinder Gupta, Senior Advocate with Mr. Janesh Gupta, Advocate, for respondents No. 1 and 2.

Mr. Baldev Singh Negi, Additional Advocate General, for respondent No.3.

Romesh Verma, Judge (oral)

The instant Regular Second Appeal has been filed by the defendants against the judgment and decree as passed by the learned Additional District Judge, Kinnaur at Rampur, dated 12th June, 2023, whereby the appeal filed by the present appellants came to be dismissed and the judgment and decree as passed by the learned Senior Civil Judge, Rampur, District Shimla, H.P., dated 27th October, 2021, whereby the suit filed by the respondents-plaintiffs was decreed, came to be affirmed.

[1] Whether reporters of Local Papers may be allowed to see the judgment?

2. The facts as emerging in the present case are that the plaintiffs-respondents filed a suit for declaration and mandatory injunction against the present appellants-defendants on the ground that the land comprised in Khata No. 124/122 min, Khatauni No. 400, bearing Khasra No. 1278, situated at Mohal Dhar, Hadbast No. 103, Tehsil Rampur, District Shimla, has been shown in the ownership of Raghu Dass, plaintiff No. 1, with other co-owners, and the same is shown in the exclusive possession of plaintiff No. 1 as *Hissedar*.

3. As per the case as set up by the plaintiffs, new Khasra No. 1278 is situated to the eastern side of Khasra No. 1281, which is on the upper side, that is, towards the hill side from Khasra No. 1281, and the same is government land. The plaintiffs are having their path through Khasra No. 1281 to reach the house which plaintiff No. 2, Shri Budh Ram, has exclusively constructed over Khasra No. 1278, and that too many years back, wherein the family of plaintiff No. 2 is residing and the same is of single storey.

4. Further, it was contended by the plaintiffs that they are continuously and unobstructedly using the path in order to have access to their houses in the village. The defendants started

digging the portion of the land in Khasra No. 1281 at *Karukan* No. 9 and 10 on the North-West side from Khasra No. 1278, and thereby completely destroyed the said path of the plaintiffs as well as of other persons of the area by cutting the said spot, and the cutting has been lowered at the said *Karukans* towards Khasra No. 1278 about 18 feet. Despite making protests, the defendants completed the said cutting work without taking any precaution of sliding of the spot, which has caused damage to the house of plaintiff No. 2 in Khasra No. 1278.

5. Due to the negligence and the deliberate act of the defendants, substantial damage to the house as well as the landed property has occurred, and for that, the defendants have made themselves liable in the eyes of law. Therefore, the present suit was instituted by the plaintiffs seeking declaration to be the user of the path leading from Khasra No. 1281 to Khasra No. 1278 from the side of *Karukan* Nos. 9 and 10 on the North-West side of Khasra No. 1278, to which the defendants have caused substantial damage while doing the cutting work.

6. The suit as filed by the plaintiffs-respondents came to be resisted by raising preliminary objections on behalf of the defendants, with respect to jurisdiction, maintainability, limitation,

and non-joinder of necessary parties. All the averments as made in the plaint were specifically refuted and denied by the defendants. The defendants, after denying the allegations as levelled in the plaint, sought the dismissal of the suit as filed by the plaintiffs.

7. The plaintiffs filed replication to the written statement, whereby all the averments as made in the suit were reiterated.

8. The learned Trial Court framed the issues in the matter on 13th May, 2015, in the following manner:

> *"1. Whether the plaintiffs are entitled for decree of declaration to the effect that plaintiffs and their family members are to be declared as user of the path leading from Khasra No. 1281 to Khasra No. 1278, as alleged? OPP.*
>
> *2. Whether the plaintiffs are entitled for decree of mandatory injunction directing the defendants to raise wrest wall and restored the original position on the spot, as alleged? OPP.*
>
> *3. Whether the suit is bad for non-joinder of necessary parties, as alleged? OPD.*
>
> *4. Whether this court has no jurisdiction to try this suit, as alleged? OPD.*
>
> *5. Whether the plaintiffs have not come to the court with clean hands, as alleged? OPD.*
>
> *6. Whether plaintiff has no locus standi to file the present suit, as alleged? OPD.*
>
> *7. Whether the suit is barred by limitation, as alleged? OPD.*

7-A. Whether the suit of the plaintiff is bad for want of notice under Section 80 CPC, as alleged? OPD-3.

7-B. Whether the suit of plaintiff is not maintainable against defendant No. 3, as alleged? OPD-3.

7-C. Whether the plaintiff has no cause of action, as alleged? OPD.

8. Relief."

9. The learned Senior Civil Judge, Rampur, District Shimla, H.P., directed the respective parties to adduce evidence in support of their contentions, and vide its judgment and decree dated 27th October, 2021, the suit as filed by the plaintiffs, Raghu Dass and Budh Ram, was decreed to the extent whereby defendant Nos. 1 and 2 were directed to construct a *pucca* wrest wall up to the upper surface of the suit land so as to give protection to the suit land from erosion and sinking. Defendant Nos. 1 and 2 were directed to construct the retaining/wrest wall within six months, failing which execution will follow against them at their own cost. As far as the other part of the claim as set up by the plaintiffs is concerned, it was ordered that the suit as filed by the plaintiffs for right of path through Khasra No. 1281 over *Karukan* No. 9 and 10 was ordered to be dismissed.

10. Feeling aggrieved, defendant Nos. 1 and 2, preferred an appeal in the Court of learned Additional District Judge, Kinnaur at Rampur Bushahr, on 2nd April, 2022. The learned First Appellate Court, vide its impugned judgment dated 12th June, 2023, dismissed the appeal preferred by the defendants-appellants and affirmed the findings of the learned Trial Court.

11. Feeling dissatisfied by the impugned judgment, the defendants have instituted the present appeal invoking the provisions of Section 100 of the Code of Civil Procedure.

12. It is contended by Mr. Bimal Gupta, learned Senior Counsel assisted by Mr. Trigun Singh Negi, learned counsel for the appellants-defendants that the impugned judgment and decree as passed by the learned First Appellate Court is erroneous and liable to be quashed and set aside. He would submit that the learned First Appellate Court has violated the mandate of the Hon'ble Apex Court, whereby the application which was filed by the respondents-plaintiffs for leading additional evidence under the provisions of Order 41 Rule 27 read with Section 151 of CPC came to be decided separately, whereas the exposition of law as laid down by the Hon'ble Apex Court is otherwise. He would submit that on this sole ground, the

appeal filed by the appellants/defendants deserves to be allowed by setting aside the impugned judgment passed by the learned First Appellate Court and relegating the parties to the said Court.

13. On the other hand, Mr. Bhupender Gupta, learned Senior Counsel assisted by Mr. Janesh Gupta, learned counsel for respondents No. 1 and 2 has defended the impugned judgment as passed by the learned First Appellate Court. He would submit that the application which was filed by the plaintiffs was decided after taking into consideration the material placed on record, and there is no infirmity by deciding the said application separately in any manner. He would submit that the present appeal, being devoid of any merit, deserves to be rejected.

14. I have heard the learned Counsel for the parties and gone through the record.

15. With the consent of the parties, the appeal is finally disposed of on the following substantial question of law:

> *Whether the application filed under Order 41 Rule 27 could be decided prior to hearing of the appeal and the additional evidence can be looked into without affording opportunity to the other side to rebut the same?*

16. Without touching the merits of the case, this Court shall deal with the substantial question of law, whereby it has been contended by the learned Senior Counsel for the appellants-defendants that as per the dictum of law and the exposition of law as laid down by the Hon'ble Apex Court, the application which was filed by the respondents-plaintiffs under Order 41 Rule 27 read with Section 151 of CPC has to be decided along with the main appeal. He submits that the plaintiffs-respondents filed the application for leading additional evidence on 2nd March, 2023. The learned First Appellate Court allowed the said application on 5th June, 2023, and thereafter final judgment was passed on 12th June, 2023. It has been vehemently contended by the learned Senior Counsel that since the application came to be allowed by adjudicating the same not along with the main appeal, but separately, therefore, the mandate of the judgments as passed by the Hon'ble Apex Court has been violated. Therefore, the impugned judgment deserves to be quashed and set aside.

17. It was laid down by the Hon'ble Apex Court in ***State of Rajasthan versus T.N. Sahani & others, 2001 (10) SCC 619*** that an application for additional evidence is to be decided along

with the main appeal because only then can the Court determine whether the documents are required for pronouncing the judgment more satisfactorily. The Hon'ble Apex Court, while dealing with the said proposition of law, has held as follows:

> ***"4.*** *It may be pointed out that this Court as long back as in 1963 in* ***K. Venkataramiah v. Seetharama Reddy [AIR 1963 SC 1526****] pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner, it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further, the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law."*

18. To the similar extent, the said principle of law has been reiterated by the Hon'ble Apex Court in the case titled as ***Union of India versus Ibrahim Uddin, (2012) 8 SCC 148***, wherein it was held as follows:

> ***"52.*** *Thus, from the above, it is crystal clear that an 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 the 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 the 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."*

19. The said proposition of law has further been reiterated in ***Chowdappa v. Hanumantharayappa, 2026 SCC OnLine SC 1509*****,** wherein it has been observed as follows:

> *"12.2 The Application must be considered simultaneously with the hearing of the main Appeal on its merits to determine whether the Court "requires" the documents to pronounce Judgment or for any other substantial cause. (North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs. (2008) 8 SCC 511).*

20. A similar legal proposition has been determined and adjudicated in **RSA No. 89 of 2008**, titled as ***Hem Raj and another versus Guddi and others***, which reads as follows:

> "17. Allahabad High Court also held in ***Chandra Deo Tyagi v. ADJ, 2020 SCC OnLine All 849*** that it is impermissible to decide an application for additional evidence separately from the main appeal. It was observed:
>
> > ***60.*** *The impugned order suffers from non-application of judicial mind to the legal requirements for consideration. The stage of consideration, as per the settled law, is at the time of consideration of the appeal on merits but in the present case, the application has been decided at a stage prior to consideration of the appeal on merits and as such the relevant consideration of appreciating the evidence on record to reach the conclusion that the additional evidence was required to be taken on record to pronounce satisfactory judgment in appeal is lacking in the impugned order. Any such satisfaction that the proposed additional evidence was required for deciding the appeal in a satisfactory manner by the appellate court is not manifested in the impugned order.*
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> *18. This position was reiterated in* ***Chowdappa v. Hanumantharayappa, 2026 SCC OnLine SC 1509,*** *wherein it was observed:*
>
> > ***12.2*** *The Application must be considered simultaneously with the hearing of the main Appeal on its merits to determine whether the Court "requires" the documents to pronounce Judgment or for any other substantial cause. (****North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs. (2008) 8 SCC 511****)*
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> *19. This Court has also taken a similar view in* ***Madan Lal*** *(supra).*

> *20. Therefore, there is a force in the submission of learned counsel for the appellants that the learned Appellate Court erred in deciding the application for additional evidence separately and not with the main appeal as is required under law. Hence, the matter is required to be remitted to the learned Appellate Court for a fresh consideration of the application along with the main appeal as per the law, and this substantial question of law is answered accordingly."*

21. Taking into consideration the law as laid down by the Hon'ble Apex Court, there is no doubt that the learned First Appellate Court has erred by deciding the application separately. It has come on record that the application for additional evidence came to be filed by the respondent on 2nd March, 2023, and the same came to be allowed on 5th June, 2023. The case file reveals that the final judgment was passed on 12th June, 2023. Therefore, in view of the legal principles of law, the impugned judgment is not sustainable in the eyes of law. Therefore, the same is liable to be quashed and set aside. The substantial question of law is answered accordingly.

22. In view of the observations made here-in-above, the present appeal is allowed, and the judgment and decree as passed by the learned First Appellate Court is quashed and set aside. The matter is relegated to the Court of learned Additional District Judge, Kinnaur at Rampur Bushahr, for deciding the

application along with the main appeal afresh in accordance with law.

23. The parties through their Counsel are directed to appear before the learned First Appellate Court on **8th December, 2026**. Since the civil suit pertains to the year 2012, the learned First Appellate Court is requested to decide the appeal as expeditiously as possible.

Pending application(s), if any, also stands disposed of.

(Romesh Verma)
Judge

November 18, 2026
(Nisha)