

HIGH COURT FOR THE STATE OF TELANGANA : HYDERABAD

MAIN CASE No.: A.S.No.2290 of 2003

PROCEEDING SHEET

SL. NO.	DATE	ORDER	OFFICE NOTE
	30.06.2026	<u>SCR,J</u> <u>I.A.NO.1 OF 2025</u> The present application has been filed by the petitioners/appellants to receive the documents filed as per the list of the documents stating that the underlying suit was filed by the original plaintiff and recently father of the petitioner No.3 expired and due to ill-health of his mother, the petitioner No.3, being the son of the original plaintiff, pursuing the matter and that in the first week of February, 2025, when they have started minor house repairs in their residence, while disposing the scrap, they found a old file in their house. After going through the papers, he came to know that the papers are belonging to the present underlying suit and immediately, it is informed to their counsel to take necessary legal opinion and since the counsel has opined that the said records are very much crucial for adjudication of the present suit. Which are as under: The present document sought to be marked as original evidence or original building plan issued by the Gram Panchayat, the original sale deed bearing document No.3873/1979, dated	<u>Note:</u> Transferred to I.O.Folder before corrections

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		17.04.1979, registered before the Sub-Registrar, Hyderabad and the said documents are proposed to be marked in favour of the petitioners/appellants. Learned counsel for petitioners/appellants would assert that the documents though were available as early on the date of filing of underlying suit, however, they could not be filed since they were not traced out, and after the death of the original plaintiff, they could be traced recently, as such, the present documents have been filed under Order XLI Rule 27 of CPC and the learned counsel for petitioners would contend that since all the original sale deed along with the permission and other receipts have been handed over by the respondent/defendant in pursuance of agreement of sale executed in favour of the plaintiff on 14.10.1991. As such, learned counsel prayed to allow the said application and mark the said documents as additional evidence. Learned counsel for respondents/defendants filed counter stating that the said documents cannot be received as additional evidence and the said documents are very much available when the suit was being tried and more so, the explanation offered by the son	

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		of the original plaintiff is not proper and since the documents are in custody of the plaintiff as on the date of filing of the suit, the said documents ought to have been filed and the said documents, at this stage, cannot be received in evidence. Evidently, the said documents, which are alleged to be delivered by the respondents/defendants to the plaintiff in pursuance of the agreement of sale dated 14.10.1991 <i>vide</i> Ex.A1, is very much available, and it is settled law that proper explanation has to be submitted as to why the said documents are not filed before the Court below when the trial was pending adjudication, since all the documents are available as on the date of filing of the suit. The Order XLI Rule 27 of CPC would specifically contemplate that the parties are not entitled to produce additional evidence in an Appellate Court. However, the Appellate Court has discretionary power to allow new evidence or witnesses in exceptional circumstances to prevent a miscarriage of justice, and the said documents were available with the original plaintiff as on the date of trial before the learned trial Court Judge and the Hon'ble Supreme Court in catena of judgments held that suit	

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		cannot be used to fill up the lacuna or to patch up the weak points in a trial has been lost, and admission of new evidence was not a vested right of the parties, but rather the discretionary power of the Court, and the true test is, whether the appellate Court needs evidence to pronounce satisfactory judgment has to be treated and in considered opinion of this Court, the documents, which are very much available, are not filed before the learned trial Court Judge for proper appreciation of evidence. However, the reason given by the legal heir of the original plaintiff that after death of original plaintiff, they were recently found when they were disposing old scrap, more so, the original plaintiff, father of the petitioner No.3 herein has expired in the year 2007, is not proper and justified and that no plausible explanation has been given by the petitioners/appellants to allow the said additional evidence at the appellate stage. In that view of the matter, the present application is not proper and is liable to be dismissed and accordingly dismissed. _____ SCR,J kkm	

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