

**The High Court of Madhya Pradesh**  
**SA No. 28 of 2000**  
**[Nathu vs. Kashibai and Ors.]**  
**Gwalior, dtd. 13/02/2020**

Shri Gaurav Mishra, Counsel for the appellant.

None for the respondents.

Heard finally.

This Second Appeal under Section 100 of CPC has been filed against the Judgment and Decree dated 27-11-1999 passed by Additional District Judge, Sironj, Distt. Vidisha in RCA No. 30A/1997 thereby affirming the Judgment and Decree dated 10-12-1991 passed by Civil Judge Class 1, Sironj, Distt. Vidisha in C.S. No. 87A/1988.

(2) The necessary facts for disposal of the present appeal in short are that the appellant had filed a suit for declaration of title and injunction on the ground that he is the owner and in possession of agricultural land i.e., Survey No.335 Min area 2.150 hectares out of 3.161 hectares (Would be referred as Disputed Property). On the Eastern side of Disputed Property, the property of Komal Singh is situated, on Western Side, the remaining part of Disputed property, on Norther side, the property of Amra Chowikdar and on Southern side, there is a public way. It was pleaded that the defendants are the legal heirs of Gulab whose name is recorded in the revenue records. However, it was pleaded that neither Gulab nor the defendants were ever in possession of the Disputed Property. Sugara Begum had given the Disputed Property to Gulab for a period of one year for agricultural purposes.

However, the name of Gulab is wrongly mentioned in the revenue records. It was prayed that the defendants no.1 to 8 are trying to take possession of the Disputed Property.

(3) The defendants filed their written statement and denied that the plaintiffs are the owner and in possession of the Disputed Property. It was also denied that Sugara Begum had kept Gulab as her servant. All other plaint averments were denied.

(4) The Trial Court after framing issues and recording evidence, dismissed the suit by the judgment and decree dated 10-2-1991.

(5) Being aggrieved by the Judgment and Decree passed by the Trial Court, the appellant filed an appeal, which too has been dismissed by the Appellate Court. An application under Order 41 Rule 27 of C.P.C. was also filed, but that too was rejected by the First Appellate Court.

(6) Challenging the Judgment and Decree dated 27-11-1999 passed by the Appellate Court, the present appeal has been filed, which has been admitted on following Substantial Questions of Law :

1. Whether the learned first appellate court has committed illegality and jurisdictional error in rejecting appellant/plaintiff's application under Order 41 Rule 27 C.P.C. dated 26-1-1999 and refused to take material and relevant certified copy of registered sale deed dated 25-4-1985 executed by Smt. Sugra Begam widow of Late Shri Habibnoor?

2. Whether the certified copy of registered sale deed from Sub-Registrar office is public document is admissible in evidence in view of provision of Sections 74 and 76 of Evidence Act, 1872?

(7) Heard the learned Counsel for the appellant.

(8) Application under Order 41 Rule 27 CPC which was filed on 26-11-1999 (wrongly written as 26-1-1999 in Substantial Question of Law) reads as under :

यह कि अपीलार्थी वादित भूमि का विक्रय प्रलेख क्रमांक 92 दिनां 25.4.85 की प्रमाणित प्रतिलिपि प्रस्तुत कर रहा है उक्त मूल प्रलेख की प्रमाणित प्रतिलिपि होकर शंका से परे प्रलेख है जो धर गृहस्थी के सामान के साथ रखा जाने से भ्रम हो गया था इस कारण ढूँढने पर न मिलने से प्रस्तुत नहीं किया जा सका था। सामान की छानबीन में मिल जाने पर आज प्रस्तुत किया जा रहा है।

(9) The moot question for consideration is that whether the Appellate has made out a sufficient reason for not filing the document before the Trial Court or not?

(10) The Supreme Court in the case of **Union of India v. Ibrahim Uddin,,** reported in (2012) 8 SCC 148 has held as under :-

37. The appellate court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide *Haji Mohammed Ishaq v. Mohd. Iqbal and Mohd. Ali and Co.*)

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39. It is not the business of the appellate court to supplement the evidence adduced by one party or the other in the lower court. Hence, in the *absence of satisfactory reasons for the non-production of the evidence in the trial court*, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce

certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide *State of U.P. v. Manbodhan Lal Srivastava and S. Rajagopal v. C.M. Armugam.*)

40. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a “substantial cause” within the meaning of this Rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment.

42. Whenever the appellate court admits additional evidence it *should record its reasons* for doing so (sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the court of further appeal to see, if the discretion under this Rule has been properly exercised by the court below. *The omission to record the reasons must, therefore, be treated as a serious defect.* But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule."

The Supreme Court in the case of **Lekhraj Bansal v. State of Rajasthan** , reported in (2014) 15 SCC 686 has held as under :

5. The case of the appellant is that his date of birth has wrongly been recorded in his service book as 20-5-1943, whereas his correct date of birth is 28-8-1945 and he sought for a declaratory relief to the said effect. It is

needless to say that the burden is on the plaintiff to prove the case pleaded by him. As observed by the courts below the appellant in his oral testimony as plaintiff has not stated that his actual date of birth is 28-8-1945. He also failed to produce any document to prove that his correct date of birth is 28-8-1945 which resulted in the dismissal of the suit by the trial court. During the pendency of the appeal, he filed an application under Order 41 Rule 27 CPC for taking on record the date of birth certificate issued by the Municipal Council, Ajmer.

6. The parties to an appeal shall not be entitled to produce additional evidence in the appellate court unless the conditions stipulated under Order 41 Rule 27 CPC are satisfied. It is not the case of the appellant that the trial court had refused to admit the said evidence which ought to have been admitted. It is also not the case of the appellant that the said evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him during pendency of the suit before the trial court. On the other hand it is vehemently contended that the said evidence, namely, the document was filed but was omitted to be tendered in evidence and got exhibited in the suit. The lower appellate court elaborately considered the factual matrix and held that the appellant has not satisfied any of the conditions stipulated under Order 41 Rule 27 and hence is not entitled to produce additional evidence. In our view the said finding has rightly been confirmed by the High Court.

The Supreme Court in the case of **Mundri Lal v. Sushila Rani**, reported in (2007) 8 SCC 609 has held as under :

21. The appellant's application for adduction of additional evidence has been rejected on valid grounds by the High Court. It, for cogent and sufficient reasons, refused to exercise its discretionary jurisdiction. We do not see any reason to interfere therewith. Even if the purported admission was made by the respondent and a subsequent pleading was to be taken into consideration, still then the respondent was required to be cross-examined. Another round of litigation would have started. We do not think that the appellant has made out a

case for grant of such indulgence."

(11) If the reasons assigned in the application under Order 41 Rule 27 CPC are considered then it is clear that no sufficient cause has been disclosed in the application. If the certified copy of the sale deed was misplaced, then the appellant could have obtained a new certified copy of the sale deed. However, that was not done. Even the fact of sale of land was also not mentioned in the Plaint. It is submitted by the Counsel for the appellant, that this Court in exercise of power under Order 41 Rule 27(1)(b) of CPC may take the document on record.

(12) Considered the submission made by the Counsel for the appellant.

(13) The appellant has failed to prove that even in exercise of due diligence, such document was not within his knowledge nor could be produced by him even after exercise of due diligence. In absence of any pleading, this Court is of the considered opinion, that if the document filed along with application under Order 41 Rule 27 CPC is taken on record, then it would not only result in protracting the trial, but would amount to taking a document on record, without any pleading. The appellant was being represented by a Lawyer, who is a law knowing professional. Under these circumstances, it is held, that the appellate court didnot commit any mistake in rejecting the application under Order 41 Rule 27 CPC.

(14) Accordingly, Substantial Question of Law No.1 is answered in Negative.

(15) So far as the Substantial Question of Law No. 2 is concerned, the sale

deed cannot be held to be a Public Document. The Division Bench of this Court in the case of **Smt. Rekha Rana and Ors vs. Smt. Ratnashree Jai** reported in **AIR 2006 SC 107** has held as under :

"8.A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale deed (or any other deed of conveyance) when presented for registration under the Registration Act, is not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration. An original registered document is not therefore a public record kept in a state of a private document. Consequently, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74, as 'public documents'. Any document which is not a public document is a private document. We therefore have no hesitation in holding that a registered sale deed (or any other registered document) is not a public document but a private document.

\* \* \* \*

11.It is clear from the above that Book 1 maintained in the Registration Offices (a Register where all non-testamentary documents relating to immovable property are copied, entered or filed) is a public record kept in a State of private documents and therefore a public document. When any person applies for the certified copy of document registered in the office which is entered/filed in Book 1, a certified copy of the document as copies/filed in Book 1 is furnished to the applicant. Such certified copy of any entries in that public record (Book 1) is a certified copy of a public document. But such certified copy of the registered document extracted from Book 1 is not itself a public document. It is really a true copy of a copy (copy of original deed entered in Book 1).

\* \* \* \*

19. We may summarize the position thus:

(i) .Production and Marking of a certified copy as secondary evidence of a public document under Section 65(e) need not be preceded by laying of any foundation for acceptance of secondary evidence. This is the position even in regard to certified copies of entries in Book I under Registration Act relation to a private document copied therein.

(ii) Production and marking of a certified copy as secondary evidence of a private document (either a registered document like a sale deed or any unregistered document) is permissible only after laying the foundation for acceptance of secondary evidence under clause (a),(b) or (c) of Section 65.

(iii).Production and marking of an original or certified copy of a document does not dispense with the need for proof of execution of the document. Execution has to be proved in a manner known to law (Section 67 and 68 and ensuing sections in chapter V of Evidence Act)."

(16) Thus, it is clear that the certified copy of the registered sale deed is not a public document. Therefore, Substantial Question of law No. 2 is also answered in negative.

(17) As a consequence thereof, the Judgment and Decree dated 27-11-1999 passed by Additional District Judge, Sironj, Distt. Vidisha in RCA No. 30A/1997 and the Judgment and Decree dated 10-12-1991 passed by Civil Judge Class 1, Sironj, Distt. Vidisha in C.S. No.87A/1988 are hereby affirmed.

(18) The appeal fails and is hereby **Dismissed**.

**(G. S. Ahluwalia)**  
**Judge**