



**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE G. S. AHLUWALIA**

**ON THE 22<sup>nd</sup> OF JULY, 2025**

**SECOND APPEAL No. 1023 of 2006**

***NARAYANJU AND OTHERS***

*Versus*

***RAJJU AND OTHERS***

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**Appearance:**

Shri Rajiv Jain, Advocate for the appellants.

None for the respondents.

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**JUDGMENT**

This second appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 29.08.2006 passed by Second Additional District Judge (FTC), Pichhore, District Shivpuri in Civil Appeal No. 5A of 2006, as well as, judgment and decree dated 30.11.2005 passed by Civil Judge Class II, Khaniyadhana, District Shivpuri in Civil Suit No. 109A/2003.

2. Appellants are plaintiffs who have lost their case from both the Courts below.

3. Undisputed fact is that father of plaintiffs and defendant Nos. 1 to 3 namely Mutiya, and father of defendant Nos. 4 to 7 namely Dev Singh, were real brothers being sons of Hirda. Hirda, Mutiya, and Dev Singh have already expired.

4. The facts necessary for disposal of present appeal in short are that Survey Nos. 43, 45, 51, 313, 314 total area 3.338 hectare situated in Village Patirameti, Tahsil Khaniyadhana, District Shivpuri, is the disputed property.



The pedigree has been given by the plaintiff in Schedule “B” appended to the plaint. It was the case of plaintiffs that Mutiya and Dev Singh were members of joint Hindu family. Being the eldest son, Mutiya was the *Karta Khandan*. He expired about 3 years back and his legal representatives are defendant Nos. 1 to 3. Dev Singh, who is the brother of plaintiff, has also expired about 9–10 months prior to filing of suit. It was pleaded that defendant Nos. 4 to 7 have been impleaded as formal parties because they are not supporting the cause of plaintiffs. It is the case of plaintiffs that Hirda, who is the father of plaintiff, was the owner of property in dispute. After the death of Hirda, the plaintiffs as well as Dev Singh inherited the property in equal share. Although the name of Hirda or Mutiya or both may be recorded in the revenue records, but plaintiffs, as well as, Mutiya and Dev Singh were in possession and in joint owners of the property in dispute. Since the name of Mutiya was recorded in the revenue records, therefore, defendant Nos. 1 to 3 are claiming that they are the sole owners and in possession of the property in dispute. Although the disputed property is situated in Village Patirepti, but apart from the disputed property some more property belonging to plaintiffs as well as Mutiya and Dev Singh is situated in Village Repti, Gudhar, as well as Golakot, and that property is also joint Hindu family property. The said property was recorded in the name of all the brothers and accordingly it was claimed that the disputed property is also joint Hindu family property of all the five brothers i.e. three plaintiffs as well as Mutiya and Dev Singh. It was claimed that names of plaintiffs and Dev Singh were recorded in the revenue records, but after the death of Mutiya, defendant Nos. 1 to 3, in connivance with the revenue authorities, had got their names mutated in the revenue records. The order of mutation was challenged by the plaintiffs but defendant Nos. 1 to 3 got the appeal dismissed. An appeal against the order of SDO is pending before the Court of Commissioner, Gwalior. It was claimed that



defendant Nos. 1 to 3 have joined hands with the influential Zamindar and on account of his high political approach and terror, no one in the village is ready to disclose the correct facts. Because of the dispute between the plaintiffs and defendants, Thakurs had taken advantage by cultivating the land for 2 years and because of their influence no officer is ready to listen to the plight of plaintiffs. Further, plaintiffs had somehow succeeded in persuading those persons to remove their possession, but still defendants are out and out to dispossess the plaintiffs, for which plaintiffs are not ready. On 08.10.2000, defendant Nos. 1 to 3 came on the spot and denied the title and claimed that the entire land belongs to them and also extended threat that they would dispossess the plaintiffs. Accordingly, the suit was filed for declaration of title as well as for permanent injunction.

Defendant Nos. 1 & 2 filed their written statement and claimed that Mutiya was never a member of joint Hindu family and he was never the Karta of joint Hindu family. On the contrary, the family was residing separately. The disputed property is the self-acquired property of Mutiya and only defendant Nos. 1 to 3 are owners and in possession of the property in dispute. Nobody else was ever in possession of the property in dispute. All other plaint averments were denied. The names of defendant Nos. 1 to 3 were mutated after giving full opportunity of hearing to the plaintiffs.

Defendant No. 6 filed her written statement and admitted the plaint averments. It is not out of place to mention here that No. 6, Bhagwati, is daughter of Dev Singh.

5. The trial court after framing issues and recording evidence dismissed the suit.

6. Being aggrieved by the judgment and decree passed by the trial court, appellants preferred an appeal, which too has been dismissed by the appellate Court.



7. IA No. 21172 of 2006 has been filed under Order 41 Rule 27 CPC. Along with this application, two copies of Khasra of Samvat 2009 and Khasra of Samvat 2007 were filed. It is mentioned in the application that the appellants are illiterate and rustic villagers and are unaware of legalities. Appellants had given all the documents to their counsel and counsel did not demand any other documents and appellants were informed that the documents already given to their local counsel were sufficient. However, when the plaintiffs contacted the present counsel, then he informed that the copies of revenue entries in the name of Hirda are required, and accordingly copies of Khasra of Samvat 2007 and Samvat 2009 have been obtained, and thus it is prayed that these documents be taken on record as additional evidence.

8. Heard learned counsel for the appellant on IA No. 21172 of 2006.

9. Order 41 Rule 27 reads as under:-

27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

10. Thus, it is clear that in order to maintain this application, an aspirant



has to prove that in spite of due diligence, he was not in a position to obtain the document, and accordingly the same could not be filed before the trial court. In the present case, appellants have tried to put the entire blame on the counsel by submitting that their counsel had not instructed them to obtain certified copy of revenue entries, and only when they contacted the present counsel, then they were instructed to obtain the revenue entries. Incompetency of a lawyer cannot be presumed, and it is not the case that the lawyer at State expense was provided to them. They had engaged the lawyer of their own choice. If the contention of appellants that their local counsel never instructed them to file copy of Khasra of Samvat 2007 and Samvat 2009 is accepted, then it would be too harsh for the respondent who was vigilantly contesting his case. If appellants are of the view that the lawyer engaged by them was not competent, then they cannot be allowed to take advantage of their own wrong by causing inconvenience to the respondent who is fighting this case since 2000. Respondents cannot be made to suffer because they had engaged some efficient lawyer whereas plaintiffs had engaged an inefficient lawyer. (It is once again clarified that this Court has not given any finding with regard to efficiency of the local counsel of appellants, but in fact, it is their case that they were not informed by their local counsel to obtain the documents, and thus they are alleging incompetency on the part of lawyer.)

Under these circumstances, this Court is of considered opinion that the appellants have failed to make out a case for taking documents on record in exercise of power under Order 41 Rule 27 CPC. Furthermore, this Court can also take the documents on record in case if it is of the opinion that the documents filed along with the application under Order 41 Rule 27 CPC are necessary for just decision of the case. The suit was dismissed by the trial court by judgment dated 30.11.2005. Thereafter, appeal was filed by the



appellants on 10.01.2006 and the same was disposed of by judgment dated 29.08.2006. From the record of trial court, it is clear that one Sanjay Bhargav was representing the appellants before the trial court, whereas Narendra Gupta, Sharad Bihari and Manoj Pathak were representing the appellants before the appellate court. Thus, two different lawyers were engaged by the appellant for separate proceedings, but still if both the lawyers did not advise the plaintiffs to obtain the documents, then if this Court takes these documents on record after 25 years of institution of suit, then it would be causing irreparable loss to defendants who were vigilantly contesting their case. Furthermore, the appellant is not ready to compensate the respondents adequately and went to the extent of threatening that in case, if any substantial cost is imposed for compensating the respondents for wasting their valuable 25 years, then the appellant may die.

11. Accordingly, this Court is of considered opinion that no case is made out for exercise of power under Order 41 Rule 27 CPC. Application fails and is hereby dismissed.

12. While arguing on merits, it was conceded by counsel for appellant that there is no evidence on record to suggest that property was in the name of Hirda.

13. Heard the learned counsel for appellant.

14. Both the Courts below have held that plaintiffs have failed to produce any revenue document to show that land in dispute was recorded in the name of Hirda. Bhu Adhikar and Rin Pustika (Ex.P/6 and P/7), which were filed by plaintiffs indicate that Survey No.45 was recorded in the name of Moti, Narayanju, Dev Singh and Kalua as *Krishak*. It is not clear from Rin Pustika (Ex.P/7) that it was issued in respect of which piece of land. Thus, in absence of any evidence to show that land in dispute belonged to Hirda, it was held by the Courts below that plaintiffs have failed to prove that land in dispute was



that of Hirda. Even otherwise, in respect of Khasra entries of 1995-1996, although names of plaintiffs were recorded in the revenue records, but it is clear from the order dated 23/3/1998 (Ex.D/1) passed by Tahsildar and order dated 15/10/1998 (Ex.D/2) passed by SDO, Pichhore that the said entries were made by the then Patwari without any order of the competent Authority and, accordingly, the Tahsildar by order dated 23/3/1998 (Ex.D/1) had directed for deleting the names.

15. Even during the course of arguments, it was fairly conceded by counsel for appellants that the aforementioned concurrent findings of facts recorded by the Courts below cannot be said to be perverse because no evidence was produced by the appellants to show that the land in dispute was ever recorded in the name of Hirda.

16. Under these circumstances, this Court is of considered opinion that as no perversity was committed by the Courts below in dismissing the suit, accordingly, judgment and decree dated 29.08.2006 passed by Second Additional Judge (FTC), Pichhore, District Shivpuri in Civil Appeal No. 5A of 2006, as well as judgment and decree dated 30.11.2005 passed by Civil Judge Class II, Khaniyadhana, District Shivpuri in Civil Suit No. 109A/2003, are hereby affirmed.

17. Appeal fails and is, hereby, dismissed.

**(G.S. Ahluwalia)**

**Judge**

(and)