IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 1st OF JULY, 2025

MISC. APPEAL No. 110 of 2015

HARCHARAN (DELETED) THROUGH LRS (1) NARENDRA SINGH AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri K.N. Gupta – Senior Advocate with Shri Ram Krishna Soni & Ms. Suhani Dhariwal – Advocates for the appellants.

Shri Ravindra Dixit – Govt. Advocate for the respondents/State.

ORDER

This appeal has been filed under Order 43 Rule 1(u) of CPC against the judgment dated 20.01.2015 passed by the Fourth Additional District Judge, Gwalior, in Civil Appeal No.24-A/2013, whereby the learned First Appellate Court has remanded the matter back to the learned trial Court.

2. It is submitted by learned counsel for the appellants that contrary to the provisions of Order 41 Rule 23 A of CPC, learned First Appellate Court (hereinafter for convenience shall be referred as "FAC") has remanded the matter back to the learned trial Court which is erroneous. The learned FAC has not decided the appeal on merits. Order 6 Rule 4(a) and Order 1 Rule 3 B of CPC are not applicable in the present case as State has already been a party in this case and State itself has filed the appeal before the learned FAC. Hence, on the basis of the aforesaid provisions, the remand of the case to the trial Court is not said to be lawful. The aforesaid provisions are regarding the Madhya Pradesh Ceiling on Agricultural Holding Land, and therefore, are not applicable in the present case. They only apply to a case filed for specific performance of contract in which the agricultural land is involved. The present case is a suit for declaration and permanent injunction against the State. Hence, both the provisions have already been complied with at the time of filing of the suit. The defence has never raised such objection in the written statement also. No such type of objection has been recorded earlier by the defence. The learned FAC suo motu contrary to the law on the anvil of aforesaid provisions has remanded the matter back. The learned trial Court has rightly decreed the suit by giving lawful findings on issues No.1 to 3, but in that respect learned FAC has not given any finding. As far as applications under Order 41 Rule 27 and under Order 6 Rule

17 of CPC are concerned, no new document or pleading is filed or proposed to be incorporated, rather these documents have already been considered in the form of certified copy of it by learned trial Court and the proposed amendment is not at all necessary because the existing pleadings covers the facts proposed to be incorporated through amendment. The conditions under the provisions of Order 41 Rule 27 of CPC have not been fulfilled by the defendants/State before the learned FAC. Therefore, such applications could not have been allowed and prayed for setting aside the impugned judgment of remand by learned FAC.

3. Per contra, learned Govt. Advocate for the State appearing for the respondents has opposed this Misc. Appeal on the ground that learned FAC has rightly remanded the matter in the light of the provisions of Order 6 Rule 4(a) as well as in the light of allowing the applications under Order 41 Rule 27 of CPC and Order 6 Rule 17 of CPC. Complete remand was required in such situation. Therefore, the impugned judgment does not call for any interference and prayed for rejection of the appeal.

4. Having heard learned counsel for the parties and perused the record.

5. Provisions of Order 6 Rule 4(a) are as follows :-

> "4-A. Particulars of pleadings for agricultural land. - In any suit or proceeding contemplated under Rule 3-B of Order I, the parties, other than the State Government shall plead the particulars of total agricultural land which is owned, claimed or held by them in any right

> and shall further declare whether the subject-matter of suit or proceeding is or is not covered by Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 (No. 20 of 1960) and whether any proceedings in relation to such subject matter are to the knowledge of the party pending before the competent authority."

6. The learned FAC has remanded the case to the trial Court under the provisions of Order 41 Rule 23-A which is as under :-

> "23A. Remand in other cases.—Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23. "

7. In the case of **Shivkumar & Ors. vs. Sharanabasappa & Ors., 2020 Legal Eagle (SC) 359** the Hon'ble Apex Court has held in para 25.2 to 25.4.1 as under :-

> **25.2.**Rule 23-A came to be inserted in Order 41 CPC by way of the Code of Civil Procedure (Amendment) Act, 1976. Prior to this amendment, it was generally accepted by the Courts that although under Rule 23, an order of remand could be made only on reversal of a decree disposing of suit on a preliminary point but, the appellate court has the inherent power of remanding a case where it was considered necessary to do so in the interest of justice. Some of the High Courts had made similar provisions by way of their respective amendments. Insertion of Rule 23-A in Order 41 by the amending Act of 1976 makes it explicit that even when the suit has been disposed of otherwise than on a preliminary point and the decree is reversed in appeal, the appellate court shall have the power of remand, if a

retrial is considered necessary. [Such powers of remand, as provided in Rules 23 and 23-A of Order 41, are different than the power of the appellate court to remit an issue for findings under Rule 25. The power of remitting is ordinarily to be resorted to when the trial court has omitted to try any material issue or to determine any question of fact. In other words, the proper procedure in a case where the trial court, while disposing of the suit on merits, had failed to determine one or more of the material issues/questions, is to remit the issue/question(s) under Rule 25 and not to remand the whole case for retrial. Ordinarily, in the case of an order under Rule 25 of Order 41, the matter is retained on the file of the appellate court and only the issue/question(s) are remitted to the trial court for findings. On the other hand, when an order of remand is made under Rule 23 or Rule 23-A, the whole case goes back for decision to the trial court except on the point on which the appellate court has returned concluded finding, if any. While making a remand under Rule 23 or Rule 23-A, the judgment and decree of the trial court is required to be set aside but it is not necessary to set aside the impugned judgment and decree when taking recourse to Rule 25 of Order XLI.]

25.3.A comprehension of the scheme of the provisions for remand as contained in Rules 23 and 23-A of Order 41 is not complete without reference to the provision contained in Rule 24 of Order 41 that enables the appellate court to dispose of a case finally without a remand if the evidence on record is sufficient; notwithstanding that the appellate court proceeds on a ground entirely different from that on which the trial court had proceeded.

25.4.A conjoint reading of Rules 23, 23-A and 24 of Order 41 brings forth the scope as also contours of the

powers of remand that when the available evidence is sufficient to dispose of the matter, the proper course for an appellate court is to follow the mandate of Rule 24 of Order 41 CPC and to determine the suit finally. It is only in such cases where the decree in challenge is reversed in appeal and a retrial is considered necessary that the appellate court shall adopt the course of remanding the case. It remains trite that order of remand is not to be passed in a routine manner because an unwarranted order of remand merely elongates the life of the litigation without serving the cause of justice. An order of remand only on the ground that the points touching the appreciation of evidence were not dealt with by the trial court may not be considered proper in a given case because the first appellate court itself is possessed of jurisdiction to enter into facts and appreciate the evidence. There could, of course, be several eventualities which may justify an order of remand or where remand would be rather necessary depending on the facts and the given set of circumstances of a case.

25.4.1. The decision cited by the learned counsel for the appellants in *Mohan Kumar* [*Mohan Kumar* v. *State of M.P.*, (2017) 4 SCC 92 : (2017) 2 SCC (Civ) 368] is an apt illustration as to when the appellate court ought to exercise the power of remand. In the said case, the appellant and his mother had filed the civil suit against the Government and local body seeking declaration of title, perpetual injunction and for recovery of possession in respect of the land in question. The trial court partly decreed the suit while holding that the plaintiffs were the owners of the land in dispute on which trespass was committed by the respondents and they were entitled to get the encroachment removed; and it was also held that the Government should

acquire the land and pay the market value of the land to the appellant. Such part of the decree of the trial court was not challenged by the defendants but as against the part of the decision of the trial court which resulted in rejection of the claim of the appellant for allotment of an alternative land, the appellant preferred an appeal before the High Court. The High Court not only dismissed [*Mohan Kumar* v. *State of M.P.*, FA No. 3 of 1998, order dated 24-1-2005 (MP)] the appeal so filed by the appellant but proceeded to dismiss the entire suit with the finding that the appellant-plaintiff had failed to prove his ownership over the suit land inasmuch as he did not examine the vendor of his sale deed. In the given circumstances, this Court observed that when the High Court held that the appellant was not able to prove his title to the suit land due to nonexamination of his vendor, the proper course for the High Court was to remand the case to the trial court by affording an opportunity to the appellant to prove his title by adducing proper evidence in addition to what had already been adduced. Obviously, this Court found that for the conclusion reached by the High Court, a case for retrial was made out particularly when the trial court had otherwise held that the appellant was owner of the land in dispute and was entitled to get the encroachment removed as also to get the market value of the land. **Such cases where retrial is considered necessary because of any particular reason and more particularly for the reason that adequate opportunity of leading sufficient evidence to a party is requisite, stand at entirely different footings than the cases where evidence has already been adduced and decision is to be rendered on appreciation of evidence. It also remains trite that an order of remand is not to be passed merely for the purpose of allowing a party to fill- up the lacuna in its case.**"

8. In the case of **Pasupuleti Venkateswarlu Vs. Motor and General Traders, 1975(1) SCC 770** the Hon'ble Apex Court has ruled that if finding on a specific point is required, then entire case cannot be remanded to the trial Court by appellate Court.

9. In the case of **Brijrajsingh & Ors. vs. Bitto Devi (Smt.) and Anr., vs. Bitto Devi (Smt.) and Anr., 1994 MPLJ 192** the Division Bench of this Court has held in para 8, 11, 16, 18, 20 & 22 as under :-

> "8. Ceiling on agricultural holdings was introduced in the State of Madhya Pradesh by M. P. Ceiling on Agricultural Holdings Act, 1960 and was brought into force on 15th November 1961. Though the Act empowered Competent Authority thereunder to examine the transactions entered into with the object of defeating the provisions of the Act and annul and avoid such transactions, yet it came to the notice of the Legislature that unscrupulous persons were utilising the forum of civil Courts as a means for setting at naught the provisions of the Ceiling Act. They would file declaratory suits or suits seeking specific performance of contracts for sale, secure a decree, collusively sometimes, and then set up the civil Court's decree before the Competent Authority under the ceiling law seeking protection thereat pleading immunity to civil Court's decree from scrutiny under the Ceiling Act. To guard against such efforts, the State Legislature came out with amendment in the Code of Civil Procedure in the year 1984.
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> 11. In Manila Bashiran Bai's case (supra), several appeals came to be decided by this Court by a common order. In all the cases, the trial Courts had decreed the

suit without securing compliance with the provisions of Order 1, Rule 3-B and Order 6, Rule 4-A, Civil Procedure Code. The lower appellate Court had set aside the decrees and remanded the case to respective trial Courts for re-trial and disposal afresh after compliance with the provisions aforesaid. Dr. T. N. Singh, J. held such an approach patently erroneous and wholly impermissible, de novo trial being not at all contemplated, which would have the effect of prolonging the life of litigation unnecessarily and causing undue harassment to the parties at all stages. It was observed :-

"The sole object of the State Amendment is to protect interest of the State in a particular class of cases. Whether the State has any interest in any case at any stage of the Us has to be decided by any Court before which any proceeding is pending when the State Amendment Act came into force and this duty is placed, by the State Amendment Act, to be discharged by not only the trial Court but also by the appellate Court, of course, excluding the executing Court, as is made very clear by the Explanation appended to the new provision. Without discharging this duty it did not behave the appellate Court to pass any barren and omnibus order, shifting its responsibility to the trial Court. What is contemplated is that the appellate Court shall issue a notice to the State of Madhya Pradesh to show cause why the State should not be impleaded as a party in the appeal. After the State appears, it will be open to the state to State its case and plead whether it would like to contest the suit on merits and to be added as defendant-respondent in the suit. Should the State plead that, it has to be heard on merits and evidence may have to be adduced. That may be done even at the appellate stage as the Court has the power to receive additional evidence. The appellate Court in these

matters is entitled to hear both sides and to give opportunity to both sides in the matter of adducing evidence. There is no necessity for remand, for de novo trial. Indeed in some of the cases it may so happen that the State should be satisfied merely being impleaded as pro forma respondent and evidence may not be necessary to be recorded. Therefore, without hearing the State the appellate Court had no jurisdiction to set aside the decree and remand the suit for retrial, after making State as a party defendant in the Court below."

In subsequent decisions noted in para 4 hereinabove, Mahila Bashiran Bais case was noticed in some of the cases, yet it was not fully followed and there the error was committed.

16. Order 1, Rule 3-B, and Order 6, Rule 4-A, Civil Procedure Code have been 'brought on the statute book to protect the interest of the State. These provisions were never intended to provide a tool in the hands of private litigants (i.e. other than State) for securing orders of remand and de novo trials consequent to directions for compliance with these provisions.

18. It is basic to civil jurisprudence that no one should be allowed to take advantage of its own wrong. No party (i.e. other than the State) should be permitted to challenge the concluded decree of Court/s below solely by complaining non-compliance with the provisions contained in Order 1, Rule 3-B, and Order 6, Rule 4-A, Civil Procedure Code because if it be a plaintiff or appellant it is to be blamed primarily for failure to implead the State as party to the proceedings at an appropriate stage and if it be a defendant or respondent it is to be blamed for its failure to raise an objection to such omission at the earliest. Section 99 and Rules 9 and 13 of Order 1, Civil Procedure Code, would water

down the force of Order 1, Rule 3-B and Order 6, Rule 4-A, Civil Procedure Code.

20. We may mention that since the day on which 1984 Amendment Act was brought into force and till this day we have not come across a single case where the State might have really put in a contest on being joined as a party to the case and taken benefit of these provisions. On the contrary we find that on account of the State being joined as a party to the case, the decree becomes binding on it while it has in fact not put in any contest. The provision far from serving its purpose pose is rather boomeranging its laudable object and public purpose behind.

22. In our opinion the law has been correctly laid down in Mahila Bashiran Bai's case (supra). We do not approve of the view taken by the learned Single Judges of this Court in the cases of Mohanlal, Shankarlal, Smt. Dhanakju and Alfoo Khan's cases (supra). In our opinion there was no occasion to make a remand solely on account of non-compliance with Order 1, Rule 3-B, Civil Procedure Code before the Court/s below and when the State had neither prayed for a remand nor had demonstrated the necessity for adopting that course."

10. In the case of **Municipal Corporation, Hyderabad vs.Sunder Singh, (2008) 8 SCC 485** the Hon'ble Apex Court in para 20 has held as under :-

" **20.** Order 41 Rule 23-A of the Code of Civil Procedure is also not attracted. The High Court had not arrived at a finding that a retrial was necessary. The High Court again has not arrived at a finding that the decree is liable to be reversed. No case has been made out for invoking the jurisdiction of the Court under Order 41 Rule 23 of the Code. An order of remand

> cannot be passed on ipse dixit of the court. The provisions of Order 2 Rule 2 of the Code of Civil Procedure as also Section 11 thereof could be invoked, provided of course the conditions precedent therefor were satisfied. We may not have to deal with the legal position obtaining in this behalf as the question has recently been dealt with by this Court in *Dadu Dayalu Mahasabha, Jaipur (Trust)* v. *Mahant Ram Niwas* [(2008) 11 SCC 753] . ”

11. In the case of **Vipin Kumar and others vs. Sarojani, 2013(1) M.P.L.J. 480** in para 17 Coordinate Bench of this Court has held as under :-

> “17. It is made clear here that for future while directing remand by the lower Appellate Court certain guidelines are required to be observed while passing judgment and order directing remand. It is directed that the lower Appellate Courts in the State shall observe the contingencies in which remand is permissible otherwise the appeals be decided on merit. The contingencies wherein remand can be directed is observed as thus:
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> (1) If the suit has been decided on a preliminary issue and the decree is reversed by Appellate Court then while passing the order of remand the Appellate Court may direct to try the issue or issues after taking the evidence already on record or after the remand, if any, on restoring the suit to its original number.
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> (2) If an appeal is preferred against the judgment and decree passed by the trial Court other than the preliminary issue and Appellate Court reversed such finding in appeal and further found that re-trial is necessary then by recording such finding the power as specified in clause (1) may be exercised by the Court

directing wholesale remand.

(3) If the Appellate Court found from the decree against which an appeal is preferred the trial Court has omitted to frame or try any issue or to determine the question of fact which appears essential to right decision of the suit on merit, then the Appellate Court may frame issues and refer the same for trial to the Court from whose decree the appeal is preferred directing to take additional evidence if required. The Appellate Court shall further direct that after trying the said issue the evidence be returned to it with a finding and reasons therefor. In such contingencies the time to return back the evidence and the finding ought to be fixed by the Appellate Court. Thereafter the Appellate Court after inviting objections may determine the appeal on merit.

(4) On production of the additional evidence and after taking them on record, if the Appellate Court is satisfied to take some witness to prove the document then the remand may be directed for taking such evidence or witness on record specifying the points for it. On taking additional evidence on record by all the times the remand is not necessary if the document is admissible in evidence and not objected by other side, the Court may pass the order on merit deciding the appeal.

(5) It is to be made clear here that if the evidence on record is sufficient to enable the Court to pronounce the judgment after re-settling the issue, the Appellate Court should not remand in routine and the appeals must be decided on merit.

(6) If the Appellate Court is of the opinion to direct for remand in any of the contingencies as specified hereinabove under clause (1) to (4), it is the duty of the Court to fix the date for appearance of the parties before the trial Court with a view to curtail the delay on directing such remand and if the remand in the above

clause (3) findings be also called within the time specified."

12. In the case of **Nihal Singh vs. Savitri Bai & Ors., I.L.R.2024 M.P. 283** the Coordinate Bench of this Court has held in para 12, 14 and 16 as under :-

"12. However in the case at hand, the learned first appellate Court has not given any finding that re-trial is necessary. Unless and until there is a finding that re-trial is necessary, the case cannot be remanded back.

14. Power to seek amendment in plaint is governed by the provisions contained in Order 6 Rule 17 of CPC. If any specific pleading or relief has not been asked for, then the substantive provision for seeking the relief is to ask for amendment under this provision. The provision under Order 6 Rule 17 of CPC is not absolute rather, it comes with a proviso.

16. By the above mentioned provision, it is clear that the relief for amendment in pleadings cannot be asked at a later stage when the relief was available earlier and not asked for. In this case, no application seeking amendment in plaint was filed. Despite this fact, the learned lower appellate Court permitted the respondent/plaintiff to amend the plaint which is per se illegal."

13. The Coordinate Bench of this Court in the case of **Smt. Laxmi Devi and others vs. Niranjan Singh and Others** decided on 21.11.2024 in M.A.No.442/2018 has held in para 5 has under :-

"5.Remand should not be with an intention to direct the Trial Court to rewrite the judgment. If the appellate Court was of the view that certain important documents which are already available on record, have been

> ignored by Trial Court or have not been appreciated in a proper manner, then instead of remanding the matter back to the Trial Court to rewrite the judgment, should have considered those material and should have recorded his own findings. It is well established principle of law that first appellate Court also enjoys the same powers which are vested in the Trial Court. The first appellate Court is a Court of fact and law, and can interfere with findings of facts recorded by the Trial Court. Remand should always be in exceptional cases but not for rewriting the judgment because remand will cause further delay in the suit. According to the appellants, suit was filed in the year 2004, 20 long years have passed. If the Trial Court is directed to rewrite the judgment, then it is certainly going to cause further delay in the disposal of the suit."

14. In the case of **Rama Kt. Barman (died) Thr. Lrs. vs. Md. Mahim Ali & Ors., 2024 Legal Eagle (SC) 808** the Hon'ble Apex Court has observed in para 11 to 14 as under :-

> "**12.**As per Order XLI Rule 25, the appellate court may, if necessary, frame issues and refer the same for trial to the court whose decree is appealed from, and direct such court to take additional evidence required. Further, as per Rule-27 Order XLI, the Appellate Court may allow evidence or document to be produced or witness examined, in the circumstances stated therein, after recording the reasons for such admission of evidence. <u>However, the Appellate Court can not create a new case for the party, frame the issues and decide the issues without following the procedure contemplated under Order XLI of CPC.</u>
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> **14.**Apart from the fact that none of the said substantial questions of law formulated by the High Court were

> either raised before the trial court or the appellate court, none of parties was given any opportunity of leading the evidence on the said issues. It is well-settled principle of law that the Court cannot create any new case at the appellate stage for either of the parties, and the appellate court is supposed to decide the issues involved in the suit based on the pleadings of the parties."

15. Having regard to the aforesaid provisions and law laid down in various cases, it is to be examined as to whether the remand by learned FAC under the provisions of Order 41 Rule 23 A of CPC is lawful or not ?

16. It reveals from the pleadings made before the learned trial Court that question of non-compliance of Section 6 Rule 4(a) was never raised by defendants/State in their written statement or otherwise. No issue in this regard was made and posed for decision before the learned Trial Court and even before the learned FAC. Learned FAC suo motu has raised an objection in this regard and concluded that to comply with this provision the case is required to be remanded to the trial Court. Since the State of Madhya Pradesh being a necessary party was defendant in this case, therefore, the compliance of aforesaid provisions was not at all necessary. The starting lines of provisions of Order 6 Rule 4(a) clearly mandates that it applies to the parties in a suit or proceedings "who are other than the State Government". This provision applies to the parties other than the State Government and where the State Government

is not impleaded as party for the purpose of compliance of provisions of M. P. Ceiling on Agricultural Holdings Act, 1960. Therefore, the observation of learned FAC for non-compliance of Order 6 Rule 4(a) does not seem to be lawful. Further the learned FAC cannot raise entire new case suo motu which was never pleaded by the parties.

17. The Hon'ble Supreme Court in the case of **Union of India v. Ibrahim Uddin, (2012) 8 SCC 148** has held in para 25 to 31 & 38 and 41 as under :-

> "25**.**The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide *K. Venkataramiah* v. *A. Seetharama Reddy* [AIR 1963 SC 1526] ,*Municipal Corpn. of Greater Bombay* v. *Lala Pancham* [AIR 1965 SC 1008] ,*Soonda Ram* v. *Rameshwarlal* [(1975) 3 SCC 698 : AIR 1975 SC 479] and *Syed Abdul Khader* v. *Rami Reddy* [(1979) 2 SCC 601 : AIR 1979 SC 553] .)
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> 26. 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.* [(1978) 2 SCC 493 : AIR 1978 SC 798])

27.Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. (Vide *Lala Pancham* [AIR 1965 SC 1008] .)

28. 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* [AIR 1957 SC 912] and *S. Rajagopal* v. *C.M. Armugam* [AIR 1969 SC 101] .)

29. 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.

30.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.

31.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.

38. An application under Order 41 Rule 27 CPC *is to be considered at the time of hearing of appeal on merits so* as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to

> pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide *Arjan Singh* v. *Kartar Singh* [1951 SCC 178 : AIR 1951 SC 193] and *Natha Singh* v. *Financial Commr., Taxation* [(1976) 3 SCC 28 : AIR 1976 SC 1053] .)
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> 41. 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."

18. In the case of **State of Gujarat v. Mahendrakumar Parshottambhai Desai, (2006) 9 SCC 772** the Hon'ble Apex Court has held in para 10 & 12 as under :- .

> **"10.....**In the instant case it was not as if the additional evidence was required by the Court to enable it to pronounce judgment and, therefore, additional evidence was sought to be adduced for "substantial cause" since serious prejudice would be caused to the appellants if the additional evidence was not permitted to be adduced. Reliance was placed on the judgment of this Court in *Municipal Corpn. for*

Greater Bombay v. *Lala Pancham* [(1965) 1 SCR 542 : AIR 1965 SC 1008] wherein this Court held that though the appellate court has the power to allow a document to be produced and a witness to be examined under Order 41 Rule 27 CPC, the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for the purposes of pronouncement of judgment in a particular way. The High Court referred to the earlier proceedings before various authorities and came to the conclusion that though the appellants had sufficient opportunity to bring the evidence on record, for reasons best known to it, the State did not produce the entire evidence before the trial court and it was only 8 years after the dismissal of the suit that the applications were filed for adducing additional evidence in the appeal. The High Court, therefore, dismissed the applications for adducing additional evidence.

12. Mr Sorabjee appearing on behalf of the respondents rightly submitted that Order 41 Rule 27 of the Code of Civil Procedure cannot be invoked by a party to fill up the lacunae in his case. The State found itself in a dilemma when confronted with two sets of documents conflicting with each other. There was no plea that the documents sought to be produced by way of additional evidence could not be produced earlier despite efforts diligently made by the State or that such evidence was not within its knowledge. In fact no ground whatsoever was made out for adducing additional

> evidence, and the sole purpose for which the State insisted upon adducing additional evidence was to persuade the Court to accept the point of view urged on behalf of the State, since the evidence on record did not support the case of the appellant State. Having considered all aspects of the matter we are satisfied that the High Court rightly rejected the applications filed by the State for adducing additional evidence at the stage of appeal which was intended only to fill up the lacunae in its case. **"**

19. The Hon'ble Supreme Court in the case of **Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd and Anr., AIR 2022 SC 4256** in para 70 has held as under :-

> "70.Our final conclusions may be summed up thus:
>
> (i) Order 2 Rule 2CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2CPC is, thus, misconceived and hence negatived.
>
> (ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17CPC.
>
> (iii) The prayer for amendment is to be allowed:
>
> (i) If the amendment is required for effective and proper adjudication of the controversy between the parties, and
>
> (ii) To avoid multiplicity of proceedings, provided (*a*)

the amendment does not result in injustice to the other side,

(*b*) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and (*c*) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless:

(i) By the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration.

(ii) The amendment changes the nature of the suit.

(iii) The prayer for amendment is mala fide, or

(iv) By the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it

> is intended to rectify the absence of material particulars in the plaint.
>
> (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.
>
> (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.
>
> (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta* v. *Gagninder Kr. Gandhi* [*Vijay Gupta* v. *Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897] .)"

20. In the light of the law laid down in aforesaid cases, it is to be examined whether the learned FAC has committed any mistake in

allowing the applications filed under Order 41 Rule 27 and Order 6 Rule 17 of CPC ?

21. Alongwith the application under Order 41 Rule 27 of CPC, whatever documents are filed on behalf of the State Government are the documents in the form of Khasra entries, certified copy of which has already been exhibited before learned FAC. The application of the respondents before learned FAC filed on 10.09.2014 itself shows that they are submitting copy of original Khasra regarding disputed land, the genuineness of which is beyond doubt. It is also stated in the application that since the counsel for the State Government did not demand such documents earlier, therefore, it could not be filed before the learned trial Court. But this reason is not sufficient vis-a-vis the provisions of Order 41 Rule 27 of CPC. Provisions of Order 41 Rule 27 of CPC are as follows :-

> "Order 41 -Appeals from Original Decrees.
>
> **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."

22. The application under Order 41 Rules 27 of CPC dated 10.09.20214 does not fulfill any of conditions laid down in aforesaid provisions. Moreover, since the documents filed with this application are original Khasra, certified copy of which has already been exhibited before the learned trial Court, these documents are not at all necessary. That apart, these documents have already been considered by the revenue authorities and their reports are appended in this appeal including the report of Collector Nazul Distt. Gwalior dated 14.02.2011 which apparently reflected in para 2 & 8 that -

"2/ उल्लेख है कि मिसिल बन्दोबस्त अभिलेख संवत् 1997 में सर्वे क्रमांक 1914 रकवा 08 बिस्वा, सर्वे क्रमांक 1915 रकवा 05 बिस्वा, सर्वे क्रमांक 1917 रकवा 03 बीघा 09 बिस्वा, सर्वे क्रमांक 1918 रकवा 03 बीघा 08 बिस्वा एवं सर्वे क्रमांक 1937 रकवा 06 बीघा 02 बिस्वा, खाना नं. 6 में पुरूषोत्तम दास तथा खाना नं.8 में चोखरूआ बल्द निरपत, श्री कृष्ण सिंह पिसरान, श्री ओमकार सिंह हिस्सा बराबर, श्री डोगर सिह, माधौसिंह, श्री हरनाम सिंह पिसरान, श्री मनोहर सिंह हिस्सा बराबर कौम कमरिया साकिन ठाठीपुर पुख्ता मौरूसी दर्ज है। इस प्रकार मिसिल बन्दोबस्त अभिलेख में समस्त भूमि निजी स्वत्व पर अंकित है।

.....

8. यह सही है कि Marriage garden + parking का कुल

रकवा 0.836 हे. है, जिसमें वर्तमान अभिलेख के अनुसार 0.407 हे. भूमि शासकीय है, परंतु यह भी निर्विवादित रूप से स्थापित है कि प्रश्नाधीन भूमि मिसिल बन्दोबस्त संबत् 1997 से संबत् 2019 तक या तो निजी रही है, या फिर उस प्रस्थिति में रही है, जिसे म.प्र. भू. राजस्व संहिता 1959 के प्रभावी होने पर धारा 158(1) के अनुसार भूमिस्वामी स्वत्व By operation of law प्राप्त हो चुका है। प्रश्नाधीन भूमि Marriage garden के संचालक के पूर्वाजो की रही है तथा मिसिल बन्दोबस्त के खाना 6 में शासकीय अंकित नही रही है।

उक्त निजी भूमि में से रकवा 2 बीघा 04 बिस्वा को छोड कर शेष भूमि संबत् 2024 में किस आदेश से शासकीय अंकित हुई, यह जानकारी प्राप्त नही हो सकी। संबत् 2020 से 2023 तक का अभिलेख अभिलेखागार में उपलब्ध नही हो सका। यदि उपलब्ध हुआ होता तो स्थिति स्पष्ट हो पाती। यदि संबंधित द्वारा रकवा 0.836 हे. भूमि पर Marriage garden संचालित है, जिसमें से रकवा 0.407 हे. शासकीय है तो Burden of proof संबंधित पर है कि वह सक्षम न्यायालय में यह साबित करे कि भूमि उनकी है।"

The Coordinate Bench of this Court has also considered aforesaid report in the order dated 29.03.2011 passed in W.P.No.2010/2011 whereby it is found that the plaintiff is in settled possession of the disputed land. If the revenue authorities are of the view that petitioner/plaintiff is in occupation of the government land, then they are at liberty to proceed with the provisions of M.P. Land Revenue Code.

23. The defendants/State Government in their written statement before the trial Court dated 09.08.2012 in para 4 has admitted this report dated 14.02.2011. Therefore, in this respect the facts are not under challenge. In the light of this fact situation, the documents along with the application under Order 41 Rule 27 of CPC were not at all necessary to be taken on record to enable learned trial Court to

pronounce judgment, or for any other substantial cause.

24. As far as application under Order 6 Rule 17 CPC is concerned, this application also did not deserve to be allowed by learned FAC as whatever amendment is proposed to be incorporated in para 8A of the written statement, is already on record in the written statement of the State Government. Moreso, no reason for delayed submission of application has been shown in the application. It is stated that it is explanatory in nature but such explanation is not at all necessary to decide the case lawfully. As far as "Batankan" of the disputed land is concerned, "Batankan" proceedings are within the jurisdiction of revenue authorities and it has no relation with the title over the land, therefore, in that respect, the proposed amendment was not at all necessary for the purpose of determining the real questions in controversy between the parties. Moreover, this application is also barred by proviso to Order 6 Rule 17 CPC which is as under :-

> "17.**Amendment of pleadings**.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> **Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the**

matter before the commencement of trial."

25. Keeping in view the law laid down in aforesaid cases coupled with the foregoing discussion, in the considered opinion of this Court, the learned First Appellate Court has not proceeded in accordance with the provisions of Order 41 Rule 23(a) of CPC before remanding the case, therefore, such remand cannot be sustainable. The learned FAC has also committed perversity and illegality in allowing the applications under Order 41 Rule 27 and Order 6 Rule 17 of CPC.

26. Consequently, the impugned order is set aside. The appeal is accordingly allowed and the matter is remitted back to the learned First Appellate Court for deciding the appeal on its own merits. The said appeal is restored for reconsideration by the learned First Appellate Court in accordance with law. As matter is pending since 2012 and old one, therefore, learned FAC is directed to dispose of the appeal on merits in light of foregoing discussion as per law within a period of four months from the date of receipt of certified copy of the order.

27. Parties are directed to appear before the First Appellate Court on 21st July, 2025.

(RAJENDRA KUMAR VANI)
JUDGE

ms/-