



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE
HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 1st OF JULY, 2025

SECOND APPEAL No. 177 of 2025

RAM SINGH
Versus
RAM NIWAS AND OTHERS

Appearance:

Shri Rishikesh Bohare, Advocate for the appellant.

Shri S.S.Kushwaha, Government Advocate for respondent No.7/State.

JUDGMENT

This Second Appeal, under Section 100 of CPC, has been filed against the judgment and decree dated 28.11.2024 passed by District Judge, Picchore, District Shivpuri (M.P.) in RCA No.11/2022 by which the judgment and decree dated 08.03.2022 passed by Additional Civil Judge, Senior Division, Picchore, District Shivpuri (M.P.) in Regular Civil Suit No.32A/2017 has been set aside.

2. Appellant is the plaintiff who has lost his case from the Appellate Court.



3. The facts, necessary for disposal of present appeal, in short, are that appellant filed a suit for declaration of title and permanent injunction pleading *inter alia* that 8 Bigha of land out of Survey No.20 was sold by Baide to defendants No.1 to 3 which was renumbered as Survey No.6/1. It is the case of appellant/plaintiff that Haru was the owner of the disputed survey number. Plaintiff is the son of Haru whereas Baide and Kaliya were his daughters and Dewa was his wife. After the death of Haru, all the four legal representatives i.e. plaintiff, widow of Haru namely Dewa, Baide and Kaliya got 1/4 share each in the property. After the death of Kaliya, her share was also inherited by Dewa therefore she became the owner of 2/4th of land left by Haru. Later on, Dewa executed a Will in favour of plaintiff and accordingly, plaintiff became owner of 3/4th part of land left by Haru i.e. 1/4th which he himself had inherited and 2/4th which was bequeathed to him by Dewa and Baide remained the owner of 1/4th share in the property. However, Baide got her name mutated in the revenue records and did not allow the mutation of name of plaintiff in the revenue records. Accordingly, a civil suit was filed which was decreed and it was held that the plaintiff has 3/4th share in the property left by Haru whereas Baide has 1/4th share. Later on, Baide started claiming that plaintiff is not the son of Haru and Dewa is not the wife of Haru. Accordingly, plaintiff filed Civil Suit No.347A/1984 which was decreed and the share of plaintiff to the extent of 3/4th was declared. The said judgment has attained finality and according to the plaintiff it is binding on Baide. It is the case of plaintiff that Baide had only 1/4th share in Survey No.20 but taking advantage of incorrect entries in the revenue records, she alienated the land in dispute to defendant Nos.1 to 3. Defendants No.1 to 3, later on, sold the land to defendant No.4. It was



pleaded that now plaintiff came to know that Baide has executed a sale deed dated 31.07.1991 in favour of defendants Nos.1 to 3 without taking any consideration and without giving any possession and accordingly, it was prayed that the sale deed dated 31.07.1991 executed by Baide in favour of defendant Nos.1 to 3 is null and void and is not binding on the plaintiff. Thereafter, defendants No.1 to 3 have also executed a registered sale deed dated 11.01.1995 in favour of defendant No.4 and Kusum and accordingly it was also claimed that the aforesaid sale deed has no binding effect on the plaintiff. It was further claimed that even if some other sale deed has been executed then the same is also not binding on the plaintiff. It was claimed that the plaintiff is in possession of 3/4th share in the property and nobody else was either in possession in past or is in possession in present. It was further pleaded that Baide in order to harass the plaintiff has also sold Survey No.19 by registered sale deed dated 26.02.1992 to Hailal, Nandlal, Soorat Singh, Bhagirath and Motilal. The said sale deed was challenged by plaintiff by instituting RCSA No.11-A/1998 and by judgment and decree dated 7/8/1998, it was held that the sale deed executed by Baide is null and void. On 24.04.2017, defendant came on the spot and started denying the title of plaintiff and also extended a threat that they would dispossess the plaintiff and defendant number 5 and 6 would cultivate the land as they have purchased the same from Kusum and Santosh. Only thereafter plaintiff came to know about the illegal sale deed executed by Baide. Accordingly, it has been claimed that defendants are taking forcible possession of the land in dispute. Thus, suit was filed for declaration that plaintiff has 3/4 share in Survey Number 20, at present renumbered as Survey Number 6/1, area 8 Bigha, which is recorded in the name of defendant numbers 4 to 6 and it was



also claimed that sale deed dated 31.07.1991 executed by Baide in favour of defendant number 1 to 3, sale deed dated 11.01.1995 executed by defendant number 1 to 3 in favour of defendant number 4 and Kusum, and also sale deed dated 15.05.2008 executed by deceased Kusum in favour of defendant number 5 and 6, are null and void. Permanent injunction was also sought that defendants may be restrained from interfering with the peaceful possession of appellant.

Defendant number 5 and 6 filed their written statement and claimed that they have purchased the property in dispute from Kusum by registered sale deed which was executed about 10 years back and since then they are in possession of the property in dispute. It appears that other defendants did not file any written statement.

The trial court, after framing issues and recording evidence, decreed the suit. Being aggrieved by judgment and decree passed by the trial court, defendant number 5 and 6 preferred an appeal which has been allowed by the appellate court by the impugned judgment and decree and the suit filed by appellant/plaintiff was dismissed.

4. Challenging the judgment and decree passed by the appellate court, it is submitted by counsel for appellant that appellant has filed an application under Order 41 Rule 27 CPC and along with the said application, Schedule “A” which was attached to the plaint filed on earlier occasion, has been filed. It is submitted that the said documents may be taken on record. It was further submitted that since appellant was not in possession of the aforesaid Schedule at the time of pendency of civil suit as well as first appeal, therefore the same is being filed at this stage. It is further submitted that



appellant has proved the execution of will in his favour by Deva. It is further submitted that the appellate court has wrongly held that appellant was already aware of the execution of sale deed much prior to the date which has been claimed by the plaintiff and proposed the following substantial questions of law:-

- (A) Whether, decree passed by learned first appellate court is illegal, without jurisdiction and bad in law?
- (B) Whether, the First Appellate Court erred in dismissing the plaintiff's claim, thereby failing to protect the plaintiff's property rights over the disputed land?
- (C) Whether the First Appellate Court erred in reversing the well-reasoned and speaking judgment passed by the learned Trial Court, which had correctly decreed the suit in favor of the plaintiff, based on the proper appreciation of evidence?
- (D) Whether the First Appellate Court misinterpreted the evidence related to the ownership of the disputed land by the plaintiffs father Haru, thereby incorrectly concluding that the plaintiff failed to prove his father's ownership of the land?
- (E) Whether the First Appellate Court erred in concluding that the plaintiff had prior knowledge of the execution of the sale deeds, despite the plaintiff's consistent statement to the contrary and lack of supporting evidence?
- (F) Whether the sale deeds executed by Baiyade were invalid in light of the fact that she had no legal right to transfer the disputed land, and whether the First Appellate Court erred in failing to uphold the findings of the Trial Court regarding the invalidity of the sale deeds?
- (G) Whether the First Appellate Court failed to consider the binding effect of previous judgments, particularly the decree dated 07.08.1998 in Case No. 11/98, which had already declared the sale deeds executed by Baiyade as void and ineffective?



H) Whether, learned both the court below erred in not appreciating the oral and documentary evidence on record?

5. Heard learned counsel for the appellant and considered I.A. No. 4219 of 2025, an application under Order 41 Rule 27 CPC.

6. The appellate Court has reversed the judgment and decree passed by the trial Court on the ground that the plaintiff has not clarified which part of property was inherited by him and had also not clarified what properties were mentioned in Annexure A which was appended to the decree which has been passed on earlier occasion. In paragraph 5 of the application, it is submitted that since the applicant is a rustic villager and is not well known to law and procedure, therefore he could not provide the documents at the previous stage of litigation and he was not in possession of certified copy of the plaint at the previous stage of litigation. He came to know about the importance of those documents only when the same were told to him by the arguing counsel.

7. Considered the reasons assigned in the application filed under Order 41 Rule 27 CPC.

8. Order 41 Rule 27 CPC 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.”

Therefore, in order to maintain an application under Order 41 Rule 27 CPC, the appellant must plead and prove that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after exercise of due diligence, be produced by him at the time when decree appealed against was passed. In the present case, the appellant himself had filed copies of judgment and decree passed in previous litigation. It is not the case of appellant that in spite of his best efforts, he could not obtain the certified copy of the plaint as well as Annexure A which he had filed in RCSA No. 347-A of 1984. The appellant was being represented by his counsel who is a trained legal professional. It is not the case of appellant that his Counsel was not intelligent enough to understand the legal provisions of law. If appellant did not obtain certified copy of the plaint as well as Annexure “A” which he had filed in previously instituted suit, then it cannot be said that he was not aware of the importance of those documents. Due diligence means that in spite of best efforts, a person is unable to obtain the documents. If a person does not apply for certified copy in spite of the fact that record of Court below is/was available, then it cannot be said that he could not obtain the certified copy in spite of due diligence.



9. Order 41 Rule 27(1)(b) of CPC provides that if the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce the judgment or for any other substantial cause, then the appellate Court may allow such evidence or documents to be produced.

10. Now the only question for consideration is as to whether this Court should exercise powers under Order 41 Rule 27(1)(b) of CPC even after coming to the conclusion that it was the appellant who was negligent in prosecuting his suit.

11. This Court cannot shut its eyes from the fact that the other party was also vigilantly contesting the suit. Even if the contention of counsel for appellant that his counsel who was conducting the trial was not vigilant is accepted, then the appellant cannot be given advantage of his own choice. The lawyer of his own choice was engaged by him. Once a person has engaged a lawyer of his own choice, then he cannot make a complaint about his intelligence. When the plaintiff himself was negligent in contesting the suit, then generally the appellate Court should not exercise its power under Order 41 Rule 27(1)(b) of the CPC because the appellate Court, if by ignoring the negligent act of plaintiff, exercises its power under Order 41 Rule 27(1)(b) of CPC and remands the matter back to the trial court, then it would amount to punishing the opposite party for no fault on its part. The appellate Court is required to strike a balance between the rights of plaintiff as well as the defendant. Defendant cannot be made to suffer because the plaintiff had decided to engage a lawyer who, according to the plaintiff himself, was not competent.



12. Under these circumstances, where the plaintiff himself was negligent in contesting the case and did not file Annexure A which was filed along with the plaint of Civil Suit No. 347-A of 1984, then this Court under the garb of necessity to pass a just decision, cannot punish the defendants. Accordingly, I.A. No. 4219 of 2025, which is an application under Order 41 Rule 27 CPC, is hereby dismissed.

13. The appellate Court has elaborately considered the fact that the claim made by plaintiff with regard to knowledge of sale deeds is false even to his own knowledge because certified copy of two sale deeds were obtained by plaintiff after institution of suit. Furthermore, plaintiff had claimed that his mother had bequeathed her 2/4 share to the plaintiff by executing a Will but even the Will so relied upon by the plaintiff was not produced.

14. It is well established principle of law that this Court in exercise of power under Section 100 of CPC cannot interfere in second appeal unless and until the findings recorded by the court below are perverse. No perversity could be pointed out by counsel for appellant.

15. Accordingly, judgment and decree dated 28.11.2024 passed by District Judge, Picchore, District Shivpuri (M.P.) in RCA No.11/2022 is hereby affirmed.

16. Appeal fails and is hereby dismissed.

(G.S. Ahluwalia)
Judge

(and)