

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SANJAY DWIVEDI
ON THE 16th OF JUNE, 2025
SECOND APPEAL NO. 1181 of 2024
FIROZA ZARIR DALAL AND OTHERS
Versus
SHRI NARAYAN SANSKRIT MAHAVIDYALAY SHIKSHA SAMITI KATNI
AND OTHERS**

Appearance:

Smt. Manjit P.S. Chuckal - Advocate for the appellants.

*Shri Ravish Agrawal – Senior Advocate with Smt. Sanjana Sahni –
Advocate for the respondents.*

Reserved on: 24.04.2025

Pronounced on: 16.06.2025

ORDER

This is a connected appeal with S.A. No.925/2024, arising out of the same judgment and decree which has also been assailed in the connected appeal and that connected appeal got dismissed by a detailed order holding that the appeal does not involve any substantial question of law and even the counsel for the appellants has also made the same submissions as has been made by counsel for the appellants in the connected S.A. No.925/2024. However, in the present case, appellants have also moved an I.A. No.12137/2024 which is an application under Order 41 Rule 27 of CPC for taking additional evidence on record i.e. a judgment passed by the High Court in a First Appeal preferred by Smt. Dhanbai and Smt. Dinoobai who are the predecessors of the present

appellants. In the First Appeal, it is held that the land i.e. 718.20 acres originally belonged to late Cowasji, the predecessor of the present appellants. However, application under Order 41 Rule 27 of CPC is silent to the extent as to why this evidence be taken on record and treated to be an additional evidence when this order of the High Court was not sought to be produced before the trial Court and even this evidence has not been produced before the appellate Court in a regular First Appeal preferred under Section 96 of the CPC.

2. The Supreme Court in case of **N. Kamalam (Dead) and another Vs. Ayyaswami and another** reported in **(2001) 7 SCC 503** has dealt with the situation under which the additional evidence can be taken on record and observed as under:-

“18. Turning attention on to the issue of additional evidence, be it noted that Order 41 Rule 27 prescribes specific situation where production of additional evidence may otherwise be had. For convenience sake, Order 41 Rule 27 reads as below:

“27. (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) Whenever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

However, looking to the facts and circumstances of the present case, I do not feel it proper to entertain the application and to permit the appellants to lead the additional evidence by taking the document i.e. Annexure A/3 on record. Therefore, the application i.e. I.A. No.12137/2024 filed under Order 41 Rule 27 of CPC is rejected.

3. Thus, in view of the reasons assigned in connected S.A. No.925/2024, this appeal is also **dismissed**.

(SANJAY DWIVEDI)
JUDGE

rao