

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 24 of 2018**

1. Kalabai W/o Shri Jailal Aged About 55 Years by Caste Ganda, Occupation Agriculture And House Wife, R/o Village Pathseoni, P.S. Chhura, Tahsil And District Gariyaband, Chhattisgarh
 2. Krishna S/o Shri Lakhan Lal Aged About 27 Years R/o Village Mudhipar, P.S. And Tahsil Pithoura, District Mahasamund, Chhattisgarh
 3. Gayatri @ Mudhipahrin D/o Lakhanlal Aged About 24 Years R/o Purani Basti, Bagbahra, Tahsil Bagbahra, District Mahsamund, Chhattisgarh
 4. Pradeep S/o Lakhan Lal Aged About 17 Years,
 5. Mahendra S/o Lakhan Lal Aged About 16 Years,
 6. Sukwaro Wd/o Lakhan Lal Aged About 48 Years,
- Appellant No.4 and 5 are minor through Natural Guardian Mother Smt. Sukwaro,
- Appellant No.4 to 6 all are R/o Village Mudhipar, P.S. And Tahsil Pithoura, District Mahasamund, Chhattisgarh
7. Bharat S/o Ratiram, R/o Village Keramuda, Tahsil Bagbahra, District Mahasamund, Chhattisgarh

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1. Smt. Devantin Bai W/o Santosh Aadvanshi Aged About 37 Years Occupation Housewife And Anganbadi Assistant,
2. Santosh Kumar S/o Late Shri Ratiram Aged About 43 Years,
3. Jagdish S/o Late Shri Ratiram Aged About 41 Years,
4. Santoshi @ Gayatri D/o Late Shri Ratiram Aged About 37 Years, All are by Caste Ganda, R/o Village Amethi, Tahsil Bagbahra, District Mahasamund, Chhattisgarh
- 5.State Of Chhattisgarh Through Collector, Mahasamund, District Mahasamund, Chhattisgarh

--- Respondents

For appellants- Shri Sunil Sahu and Shri Sumit Shrivastava, Advocates.
 For State/respondent No.5- Shri Aditya Sharma, PL.
 No representation is made on behalf of respondents No.1 to 4.

Hon'ble Shri Justice Goutam Bhaduri**Order****09/10/2018**

Heard.

1. Instant appeal is against the order dated 9/02/2018 whereby the appellate court has remanded the case back for adjudication to the trial court for the reason that before the appellate court an application under Order 41 Rule 27 of CPC was filed along with document i.e. ration card were placed by the appellant to lead evidence in respect of relations of the parties inter se.

2. Facts of the case would reveal that Devantin Bai, Santosh Kumar, Jagdish and Santoshi four persons filed a suit against Kala Bai, Krishna, Gayatri, Pradeep, Mahendra, Sukhwaro and Bharat defendants. In the said civil suit declaration was sought for alongwith injunction that defendants do not have any right or title over the property. In the said suit counter claim was also filed by the defendants. It was stated that Kala Bai the defendant was born from one lady named Bulchi and Bulchi was not married to Chamra through whom property devolved. It was further stated that mother of the Kala Bai namely Bulchi during the life time of Chamra had left him and started staying with another person, therefore Kala Bai and their heirs do not have any right over the property of Chamra and after death of Chamra in order to grab the property mutation of the name in the revenue records were made.

3. The defendants stated that original land was held by Pachkaud he had four sons and Maheshu @ Chamra was one of them. It was stated that one Mahesh @ Keshu died issue less and therefore after death of Pachkaud and his wife, land were mutated in the name of Ratiram, Maheshu (Chamra) and Chamanlal. It was stated that father of Kala Bai was Maheshu (Chamra), therefore she was entitled to one third share in the land of Maheshu @ Chamra. It was stated that Kala Bai born out of

the relation of Bulchi and Maheshu. However, subsequently after death of Maheshu in 2004 her right to property was denied and counter claim was made claiming one third share by partition and possession.

4. Initially trial court after hearing by judgement and decree dated 29/11/2016 partly allowed the suit of the plaintiff as also counter claim of Kala Bai defendant and it was declared that defendant No.1 was entitled to one third share and was entitled for partition and possession of the land and rest of the persons were given different land.

5. Said judgement and decree was subject of appeal bearing No. H 04 A/2017 before the District Judge, Mahasamund. During the pendency of this appeal by the appellants/plaintiffs an application was filed under Order 41 Rule 27 of CPC and four documents were filed. In application under Order 41 Rule 27 of CPC reasons were assigned that during Diwali while cleaning the house certain documents were found which were necessary to demonstrate the relationship in between the parties. Document includes ration card which was in the name of Chamra. Respondent in the appeal denied the averment and stated that said documents were falsely been prepared.

6. The appellate court while adjudicating the appeal framed further two questions which are as under:-

(a) Whether respondent No.1 i.e. Kala Bai is daughter of Chamra?

(b) Whether Chamra and Maheshu are one and same person or they are separate two persons i.e. Chamra and Maheshu?

And remanded the case for adjudicating the application under Order 41 Rule 27 of CPC before the court below.

7. Learned counsel for the appellants would submit that the appellate court has failed to appreciate the fact and without any application of mind has remanded the case by allowing the additional evidence to be adduced

over and above the existing evidence which is not permitted under Order 41 Rule 29 of CPC, therefore order requires to be set aside.

8. No representation is made on behalf of the respondents No.1 to 4 even in the second call in the pass over.

9. Perusal of the order would show that appellate court observed that to demonstrate the relation in between the parties both the plaintiffs and defendants have produced oral evidence. The Court observed that any documents to show the inter se relation i.e. birth certificate, kotwari panji, school certificate and revenue documents which would have been relevant have not been produced. The court observed that one party says that Chamra and Maheshu was one person whereas other party says that Chamra and Maheshu were separate two individual persons. Likewise the court observed that Kala Bai was not daughter of Chamra whereas other adversary party has stated that Kala Bai was daughter of Chamra. Therefore except oral evidence nothing was placed on record to ascertain the relation of the parties. While evaluating the statement of one plaintiff Santosh court observed the averments of cross examination at para-16 and stated that when specific question was asked that Maheshu @ Chamra is one person he did not reply and kept silence which raises doubt. Likewise Kala Bai defendant No.1 at para 12 stated that Maheshu died and was unmarried. Subsequently, volunteered that Maheshu was her father.

10. The court therefore while adjudicating the application under Order 41 Rule 27 CPC observed that the document produced by party do not appear to be prepared one. Perusal of the order shows that alongwith the application under Order 41 Rule 27 CPC the nature of document was a ration card wherein name of Chamra and his wife Chamrin Bai and their daughters were shown as Ganvati and Rekha. As such in order to

appreciate the relation in between the parties it was observed that said documents may be necessary and further evidence would be required.

11. The Supreme Court in case of **Union of India Vs. Ibrahim Uddin & Anr.** reported in **(2012) 8 SCC 148** to adjudicate the ratio to be followed while deciding the application under Order 41 Rule 27 of CPC the paragraphs 36 to 42 would be relevant and are quoted below:-

“36. 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, provision does not apply, when on the basis of 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 Corporation of Greater Bombay v. Lala Pancham](#), AIR 1965 SC 1008; [Soonda Ram v. Rameshwarlal](#), AIR 1975 SC 479; and [Syed Abdul Khader v. Rami Reddy](#), AIR 1979 SC 553).”

“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.](#), AIR 1978 SC 798).”

“38. 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].”

“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](#), AIR 1957 SC 912; and [S. Rajagopal v. C.M. Armugam](#) , AIR 1969 SC 101).”

“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 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.”

12. Likewise in case of **Wadi Vs. Amilal & ors.** reported in **(2015) 1 SCC 677** court observed that when document in question would throw light on the germane issue and is necessary for pronouncing judgment, document would be necessary. Paragraphs 5 and 6 of the said judgment are reproduced hereunder:-

“5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in clauses (a), (aa) and (b). We are concerned here with clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

“6. In this case, on the question whether Rupa Ram died in 1951 or in 1960/61, the Revenue Appellate Authority referred to a copy of mutation No. 49 and remanded the case to the original authority. The document in question would throw light on the germane issue and is, therefore, necessary for pronouncing judgment in the case on the question whether remand of the case was justified. In our view, the Board of Revenue ought to have admitted the additional evidence under clause (b) aforementioned. It erred in declining to admit that document as additional evidence.”

13. In the light of the aforesaid principles when order of the learned

District Judge is examined it would reflect that court has given the reasons why the document would be necessary as some documentary evidence was produced to explain relation in between the parties when both of them were in denial mode and were adverse to each other. The reasons assigned by the learned court below satisfies the principles laid down by the Supreme Court (supra) and cannot be stated that without application of any mind court has passed the order. Perusal of the order would show that court had taken enough pain to go into entire evidence and thereafter evaluated the need and value of the document and found that except oral evidence to show relation in between the parties if certain documents are produced which may throw light on the relation in between the parties that would be necessary. As such order passed by the court below in the considered opinion of this court falls in line to the principles laid down by the Supreme Court in the facts of this particular case.

14. In the result, appeal has no merit and is hereby dismissed.

15. Registry is directed to return record of the court below forthwith.

Sd/-

(Goutam Bhaduri)

JUDGE