

order below Ex. 16

(1) I have read the application. Heard the Ld. Advocate for the Appellant as well as respondent. Perused the papers placed on the record of present appeal and also perused the record and proceedings of the original RCS No. 12 of 2017.

(2) The present Regular Civil Appeal has been filed against Judgement and Decree dated : 24.03.2023 passed by the Court of Ld. Principal Civil Judge, Kalyanpur in Regular Civil Suit No. 12 of 2017, by which the Trial Court has passed an decree of eviction in favour of the present respondent.

(3) The appellant has filed present application under order 41 rule 27 of CPC. The appellant is seeking permission to produce additional documents i.e. (1) Property Valuation Report, (2) Pedigree of deceased Dudabhai Goraniya, (3) Assessment register maintained by Raval Village Panchayat from 1998-99 to 2022-23. it is submitted that above documents are necessary documents to determine dispute of appellant regarding adverse possession and hence, necessary witness summons is required to be issued to concerned officer of Raval Village Panchayat for production of the said documents and to give deposition. It is also submitted that there shall be no prejudice cause to respondent if the said documents are produced on record on the contrary the said documents are necessary for adjudication of disputes between the parties. It is also submitted that appellant does not have the status or possession of suit property as caretaker but appellant possess the suit property as member of the joint undivided family as the suit property also belongs to joint undivided family and was purchased from the fund of undivided family and only due

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to love and affection the suit property was purchased in name of the respondent. It is also submitted that above mentioned documentary evidence is required to establish and proved pleading of adverse possession. Hence, it has been submitted that necessary witness summons for production of documents and for recording of deposition be issued as prayed for.

(4) Against the present application written submission has been filed on behalf of the respondent at Ex. 18. It has been submitted on behalf of respondent that appellant has from time to time used dilatory tactics to keep the appeal pending and for that reason only the present application has been filed. It is submitted that documents which are seeking by the appellant could have easily been produced by him during the course of the trial proceedings. It is submitted that appellant has failed to establish that despite proper exercise of due diligence he has not produced the documents before the trial court. It is submitted that present application is filed only with a malafide intentions to prolong the matter and to harass the respondent with an ulterior motive to delay the present appeal. It is also submitted that documents which are sought to be produced do not have any substantial bearing on the merits of the case and in such circumstances, present application to produce additional documents is not required to entertained and required to be rejected.

(5) I do not found merits in the present application because it has never been pleaded by the present appellant in the suit proceedings before Ld. Trial Court about plea of adverse possession and hence, documents sought to be produced before this appellate Court are not required for adjudication of the present appeal and this appellate court can able to adjudicate the controversy involved in the appeal relying on the materials

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placed before the record and without taking into consideration the additional documents sought to be adduced. Further, the appellant herein is failed to assign any justifiable cause to show that despite due diligence shown to produce the same due to unavoidable circumstances, it could not be produced. Further, for the sake of arguments, if we believed that the appellants failed to produce this documents due to bonafide mistake of misconception then also the appellant is failed to come up with those additional documents along with the appeal or soon thereafter. It is settled principle that the Appellate Court can permit additional evidence only and only if the conditions laid down in O. 41 R. 27 of CPC founds to be in existence and provision does not apply, when on the basis of evidence on record, the Appellate Court can pronounce a satisfactory judgment. Hence, considering the circumstances prevail in the present matter and considering the discussion above, this application Ex. 16, being without any merits hereby rejected, however with no order as to costs.

Place : Dwarka.
Date : 11.08.2025.

[Kaushikkumar Jashvantlal Modi]
Additional District Judge, Dwarka.
(UID-GJ00597)