

KAUK320003282019



**IN THE COURT OF THE SENIOR CIVIL JUDGE, BHATKAL,  
AT: BHATKAL.**

**PRESENT :** SRI. KURANI KANT DHAKU  
B.Com.LLB. [Spl.]  
SENIOR CIVIL JUDGE & JMFC,  
BHATKAL.

**REGULAR APPEAL No.42/2019.**

**DATED THIS 29<sup>th</sup> DAY OF OCTOBER-2024.**

**BETWEEN:**

1. SRI. JOSEPH S/O: MARTIN D'SOZA

----- **APPELLANT.**

**AND:**

1. SMT. EPIPANIYA DISOUZA W/O: VENKATESH AND ANOTHER.

-----**RESPONDENTS.**

**PARTIES TO THE I A No.III.**

**BETWEEN:**

1. SRI. JOSEPH S/O: MARTIN D'SOZA

-----**APPLICANT.**

**[ ORIGINAL APPELLANT ]**

**AND:**

1. SRI. EPIPANIYA DISOUZA W/O: VENKATESH AND ANOTHER.

----- **OPONENTS.**

**[ ORIGINAL RESPONDENTS ]**

**[ BY SRI. K. R. NAIK ADVOCATE FOR APPELLANT/APPLICANT ]**

**[ BY SRI. S.V. ADI ADVOCATE FOR RESPONDENT No. 1 & 17 ]**

**[ BY SRI. J. D. BHAT ADVOCATE FOR RESPONDENT No. 13 ]**

**DETAILS OF INTERLOCUTORY APPLICATION AS PER CIRCULAR NO. R.J.163/2023**  
**DATED 24.08.2023 AND WP NO. 201865/2023.**

Provision under which application is filed	U/O. 41 Rule 27 of CPC
Relief sought for	Production of additional evidence.
The date on which the application is filed	09/12/2022.
No. of application	I A No. III.
Date on which the objections are filed by different opponents	Not filed.
The date of order.	29/10/2024.

Sd/-

SRI. KURANI KANT DHAKU.

SENIOR CIVIL JUDGE, BHATKAL.

**ORDER ON I. A. No. III.**

The present IA.No.III is U/Order XLI Rule 27 of CPC filed by applicant/Appellant, seeking permission to produce the additional evidence.

2. In the affidavit, it is stated that the defendant No.1 to 4 were sold the ancestral 'A' suit schedule property to defendant No.16 dated 30.4.2019. Hence, the present appellant has filed the suit before the Trial Court seeking relief that the sale deed executed by defendants is not binding upon him. Further, it is stated that the Trial Court has allotted share in 'B' suit schedule property but, Trial Court has not allotted share in the 'A' suit schedule property. Hence, the present appellant has challenged the judgment and decree of the Trial Court

before this Court by way of Appeal. Further, it is stated that the respondents were filed false suit with intend to grab the joint family properties. Further, it is stated that after the judgment and decree of the Trial Court, the appellant approached to the Land Tribunal and obtained certain documents from the Land Tribunal. Hence, there are sufficient evidence to set aside the judgment and decree of the Trial Court. The said all public documents and he obtained the said documents from the competent authority when he came to know the fact. Hence, there is no intentional delay to produce the documents. The Appellant is entitled 1/3rd share in the suit schedule property and to prove the above facts, the documents obtained from Land Tribunal are very much necessary to produce before this Court to determine the dispute between the parties. Hence, prays to treat the above documents as additional evidence and permit the Appellant/Applicant to adduce the additional evidence for the interest of equity and justice. Further, it is stated that no harm or loss caused to the opposite party, if the application is allowed. But, if the application is not allowed irreparable losses will cause to the appellant/applicant, which is not compensated in terms of money. Hence, prays to permit the appellant/applicant to adduce the additional evidence.

3. In the instant case, the respondents have not filed objections. But, on perusal of order sheet dated 9-12-2022 the very appellant has filed Memo requesting to club this Appeal with Regular Appeal No. 41/2019. Hence,

considering the above facts, the objection filed by the respondent No.8 in RA No. 41/2019 is to be considered as objections to this Application. In the instant Appeal, respondent No.2, 4 to 12 are placed ex-parte and respondent No.14 to 16 are dispensed. The respondent No.8 filed objections to the I.A. denying the entire contents of the affidavit and contended that the present I.A. is not maintainable under law or facts and contended that the IA is not maintainable at this stage and contended that there is no sufficient and cogent reason to allow the I.A. Further, it is contended that the present Appellant/applicant has not stated proper reason that what prevent him to produce the above said documents before the Trial Court. Hence, the present application is filed by the appellant/applicant only to fill-up the locunas. Further, it is contended that the Trial Court has already heard the matter and rightly passed judgment and decree. Further, it is contended that the approach of the appellant is not bonafide one and he filed the present application just to protract the present case. Further, it is contended that the documents sought for production are not relevant for adjudication of the Appeal. Hence, prays to reject the I.A. in the interest of equity and justice.

4. I have heard arguments of both sides and perused material records.

5. On perusal of entire material records, the points would arise for consideration are:

**P O I N T S:**

**POINT No.1: Whether the Appellant/Applicant has made out sufficient grounds to allow the I.A. No. III Under Order XLI Rule 27 of CPC?**

**POINT NO.2: What order.?**

6. On careful scrutiny of entire material records, my findings to the above points are:

**F I N D I N G S:**

**POINT No.1: In the Negative.**

**POINT No.2:** As per my final order for the following:

**R E A S O N S:**

**7. POINT No.1 :** The present I.A.No.III is filed by the Appellant/Applicant seeking permission to adduce the additional evidence.

8. A perusal of records, it is noticed that the respondent No.1 has filed OS NO. 124/2009 for the relief of partition and declaration and consequential relief of permanent injunction. Furthermore, admittedly the present appeal is filed before this Court challenging the judgment and decree of the Trial Court on several grounds.

9. A perusal of judgment and decree of Trial Court in OS 124/2009, it is noticed that the suit filed by the respondent No.1 was decreed and held that

plaintiff No.1 and 2 and defendant No.1 to 15 are entitled 1/24<sup>th</sup> share in 'B' suit schedule properties.

10. In the affidavit, it is stated that presently the appellant/applicant has intend to adduce the additional evidence. It is stated that after the dismissal of suit by the Trial Court, obtained certain documents from the Land Tribunal. So, the said documents are necessary for complete adjudication of appeal. On the other hand, the respondent No.8 has filed his objections and denied all the contents of the application.

11. Admittedly, the present appellant/applicant is sought permission for adduce the additional evidence in the appellant stage. So, before going to the merits of the application, it is proper to know the relevant provisions under order XLI Rule 27 of CPC, the said proviso reads as under:

**Order XLI Rule 27 of CPC:- 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.

12. On plain reading of above proviso, it is clear that in appellant stage the parties are not permitted to adduce the additional evidence unless the Trial Court refused to admit the evidence. Under the above said proviso, the parties are admitted to adduce the additional evidence in the Appellant stage when the said fact was not within his knowledge and proves that by exercising due diligence he has not produce the additional evidence before the Trial Court. In the instant case, the appellant/applicant himself stated that after dismissal of OS 34/2011, he obtained certified copies from the Land Tribunal. Admittedly, the documents sought for production are public documents, but the appellant/applicant has not placed any proper reason and documents to show that the above said documents are not within his knowledge. Hence, the reasons given by the appellant/applicant are not just and proper and hence, the IA is not maintainable.

13. From careful perusal of entire material records, the appellant has not place any material records to show that he has no knowledge of availability of

documents sought for production. Hence, appellant/applicant has not made out any grounds to allow I.A. Therefore, I answer POINT No.1 in the NEGATIVE.

**14. POINT No.2.:** As reasons discussed supra, I proceed to pass the following:

**: O R D E R :**

**The I A No.III U/O XLI Rule 27 r/w section  
151 of CPC filed by the Appellant is hereby DISMISSED.**

*[Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the Open Court on this 29<sup>th</sup> day of October -2024]*

Sd/-  
**(Kurani Kant Dhaku)**  
**Senior Civil Judge & JMFC,**  
**Bhatkal**