



R.C.A. No. 20/2024
Zubaida Nasrin + 5
X Abdul Sattar
MHBU04-000381-2024

ORDER BELOW EXH. 12

Date of Order : 07th February, 2026

This application is filed by the appellants/ under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 for production of additional evidence and exhibiting the documents.

2. The respondent has resisted the application by filing say at Exh. 14. It is contended that, present application is not tenable in fact and in law and it does not confirm with the requirement of Order XLI Rule 27 of the C.P.C. The appellants have not filed such documents in the trial Court and there is no averment in the application that the appellants have not been given opportunity to file such documents. It is contended that, the documents sought to be produced are not relevant and necessary and considering the controversy involved in the matter. It is contended that, the original defendant Mohammad Haroon has clearly admitted his ownership and possession over the suit property as described in Para 1 of the plaint and any material or document which will have an effect of withdrawing the said admission or which are in variance or

contradiction to such admission are not and cannot be said to be relevant or necessary to decide the controversy. It is contended that, there is no pleading in the original written statement in respect of the matter referred in the documents. It is contended that, present application is filed regarding the application for amendment in written statement by the appellants. Therefore, without allowing amendment in the written statement no question arise to file present application, hence, requested to reject the application.

3. Ld. Advocate Mr. Z.B. Shaikh for the appellant has submitted that, during pendency of the suit, original defendants have filed written statement and he died. Appellants are legal heirs of the deceased defendant and they are already brought on record in the suit. He submitted that, as per extract Namuna 'D' total area of suit property is 291.44 Sq. Meter which comes to 3135.90 Square Feet. It is submitted that, on 20/02/2025 when the appellant No. 5 has verified the extract of Namuna 'D' from the Nazul Department, he came to knowledge that, original defendant has sold out the open portion of the suit plot

admeasuring 62.6 feet X 22 feet i.e. 1372.2 Sq. feet on 30/11/1990 by way of registered sale deed to Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayyub Shaikh Rustam. He submitted that, said sale deed is duly registered in presence of two attesting witnesses. Appellant were no knowledge about the execution of sale deed in favour of Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayyub Shaikh Rustam before 20/02/2025. He further submitted that, they came to know about the said document on 21/02/2025 when they obtained digital copy of extract of Namuma 'D'. He submitted that, accordingly, the mutation entry No. 130 has been taken on 12/02/2025 in the name of Arbi Madarsa Panch Committee, Khamgaon. Therefore, it is necessary to place on record above two documents. He submitted that, as per Order XLI Rule 27 of the C.P.C. appellant are entitled for production of documents. He submitted that, for proper adjudication of the matter it is necessary to permit the appellants for production of documents. He relied upon the following authorities.

3.1. *Sanjay Kumar Singh Vrs. The State of Jharkhand, 2022 0 AIR (SC) 1372*, in which the

Hon'ble Supreme Court has observed that, additional evidence does not depend upon the relevancy to the issue in hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

3.2. *Jiten K. Ajmera and another Vrs. M/s. Tejas Cooperative Housing Society, 2019 0 AIR (SC) 2311*, in which the Hon'ble Supreme Court held that, under Order XLI Rule 27 of the CPC a party can produce additional evidence at the appellate stage, if it establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge, or could not even after the exercise of due diligence, be produced by it at the time when the decree appealed against was passed.

4. On the other hand Ld. Advocate Mr. S.V. Agrawal for the respondent has argued as per reply. He further submitted that, the appellants seeking to produce the documents on record regarding the amendment which appellant were wanted to make in their written statement. However, this Court has already rejected their amendment application. Hence, present application does not survive. He further submitted that, moreover, the description of the suit property is not a subject matter of the alleged sale deed. Hence, said document are not necessary for determination of appeal. He further submitted that, the authorities cited supra by the appellants are not helpful to the case of appellants, because, facts are different. Hence, he urged to reject the application.

5. I have thoughtfully considered the submissions of both sides. Perused the application, say and record and proceeding of the case. I have gone through the authorities cited supra by the appellants.

6. The record shows that, respondents/original plaintiffs have filed Regular Civil Suit No. 42/2012 before

the Ld. Civil Judge Junior Division, Khamgaon for specific performance of contract and possession with ancillary reliefs in respect of Nazul Sheet No. 31C, Plot No. 1/21-B-50 (1/1-B-50), admeasuring area as per Namuna 'D' admeasuring 291.44 Sq. Meter i.e. 3135.90 Sq. Feet out of land Survey No. 11, wherein two rooms have constructed, basement of two rooms with other things situated at Khamgaon, Taluka Khamgaon, District Buldana on the basis of agreement to sale executed by original defendants in favour of the plaintiff. According to respondent, he has purchased the suit house owned and possessed by the defendant by way of agreement to sale and defendant agreed to execute registered sale deed of suit house for consideration of Rs.3,30,000/-. The plaintiff has paid earnest amount of Rs.1,00,000/- to the original defendant. The defendant agreed to execute the sale deed on 30/05/2008. But, defendant was unable to hand over the vacant possession of the suit house to the plaintiff. Hence, defendant requested to the plaintiff seeking time for the same purpose till 30/08/2008. Therefore, defendant executed another agreement to sale on 30/05/2008 in favour of plaintiff by extending time thereof. Said document

was notarized. It was agreed that defendant will execute registered sale deed till 30/08/2008 by accepting balance consideration Rs. 2,30,000/-. Plaintiff requested defendants to perform his part of contract and he drawn pay order of Rs. 2,30,000/-. He asked defendant to remain present for execution of registered sale deed on 29/08/2008 or 01/09/2008. But defendant did not remain present. However, defendant sent notice to the plaintiff to avoid the registration of sale deed. Therefore, plaintiff filed suit for specific performance of contract.

7. Original defendant has resisted the suit by filing written statement vide Exh. 13. He has admitted about the description of the suit property. He has given his evidence before the trial Court as per pleading. After recording the evidence of defendant, he died and present appellants were brought on record being his legal representative.

8. Record shows that, even though present appellants were came on record as a defendants being legal heirs of original defendants, they have not filed their written statement or additional written statement before the trial Court. Original defendant certainly would have

knowledge about the exact description and admeasuring area of said property and alleged execution of sale deed dated 30/11/1990 executed by him in favour of Arbi Madarsa Panch Committee, Khamgaon through Shaikh Ayyub Shaikh Rustum. But, nothing so happened.

9. Present application is filed under Order XLI Rule 27 of the C.P.C. It provides that,

(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.

10. It appears that, present application has been filed by the appellant, in view of proposed amendment application filed below Exh. 11 regarding the amendment in written statement. Said application Exh. 11 is already rejected by this Court. Therefore, I am of the opinion that, the documents which appellants want to produce on record are not requires for adjudication of the matter. Moreover, present application does not come within the ambit of clause (a), (aa) of the Order XLI Rule 27 of the C.P.C.

11. I have respect to the observations of the Hon'ble Supreme Court in the cases cited supra by the appellants, but, those are not helpful to them because facts are

different. As I have held that, the alleged document which appellants want to produce on record have no relevancy to the present matter. Therefore, present application does not come within the ambit of Order XLI Rule 27 of the C.P.C. Hence, application deserves to be rejected. In result, I pass following order :-

ORDER

1. The application Exh. 12 is hereby rejected.
2. Cost in cause.

Khamgaon.
Date – 07/02/2026.

(G. B. Jadhav)
District Judge – 1
Khamgaon

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ORDER ON EXH. 12

CERTIFICATE

I certify that this order P.D.F. uploaded is a true and correct copy of original signed order.

Name of the Court : District Judge – 1,
Khamgaon.

Name of the Stenographer : Miss H.D Chaudhari,
Stenographer Grade I.

Date of Order : 07/02/2026.

Date of Uploading : 07/02/2026.