

MHRG010007442012



Mr. Vasudev Mahadeo Bhangre

Through Power of Attorney
Shri. Vilas Gajanan Burande

Vs.

Smt. Vimal Shankar Mhatre & Ors.

Order Below Ex.87 in Reg. Civil Appeal No.22/2012

The present application has been made by the appellant under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure, 1908, (in short 'the C.P.C.')

 for producing documentary evidence, in the appellate Court.

2. By way of Reg. Civil Appeal No.22/2012, the appellant is challenging the Judgment and decree dated 14.11.2011 passed by the Jt. Civil Judge, Jr. Div. Alibag in Reg. Civil Suit No.98/2000, whereby the suit came to be dismissed.

3. It is contended by the appellant that during the pendency of the present appeal he has found vital and important documents which are relevant to the facts of the present appeal to be decided, hence has filed the present application. It is contended that in the month of September 2025 upon obtaining certified copies of the Court records it was noticed that several documents and evidence earlier supplied by the appellant to his advocate, during the trial, were not brought on record or exhibited before the Trial

Court. Said omission occurred due to inadvertence and lack of proper assistance from the Advocate then representing the appellant. It is also submitted that after disposal of the Suit upon a fresh and detailed search in the premises of the appellant and other offices of the Revenue Department and other authorities, the appellant had recently traced and obtained several documents which are material and relevant for proper and complete adjudication of the dispute involved in this appeal. It is contended that the said additional evidence is much necessary for doing complete justice between the parties and no prejudice will be caused to the respondent if the present application is allowed. Hence, it is prayed that the application may be allowed.

4. The respondent Nos.4,5,6 and 7 have filed their say and strongly objected to the application. It is submitted that the application is filed with malafide intention to delay the hearing of the appeal. The appellant had not made out any grounds as to why he could not produce the documents before the Trial Court. Hence, prayed that the application be rejected.

5. Heard Ld. Advocate Shri. Hattarkar for the appellant and Ld. Advocate Shri. Oak for respondent Nos.4 and 5 and Ld. Advocate Shri. Acharya for respondent Nos.6 and 7, at length.

6. It is seen that Order 41 Rule 27 of the C.P.C. reads as under :-

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

7. Thus bare reading of Order 41 Rule 27 Clause (b) shows that in case the Appellate Court requires any documents to be produced or witness to be examined, to enable to pronounce the Judgment or for any other substantial cause, such an application can be allowed. However, it is not so in the present case.

8. Secondly, as per Order 41 Rule 27 clause (aa), a party to an appeal can be allowed to produce additional evidence, if it establishes that even after exercising due diligence such evidence was not within his knowledge or could not after the exercise of due diligence be produced before the Trial Court.

9. I shall now evaluate whether the appellant has satisfied the requirements of Order 41 Rule 27 of the C.P.C.

10. The appellant wishes to produce as additional evidence-
i) the Revenue Receipts (Dhara Pavti) 1967, 1968, 1975 in respect of Khata No.162 of Suit Property standing in the name of late Mahadeo Laxman Bhangre to establish the case of Appellant that the Property was in possession of Appellate being an "Agriculturist".

ii) Index II (Year 1968) evidencing registration of the Sale Deed executed between Bhangre and Mhatre Family to establish the fact that the Suit Property was sold to the Appellant.

iii) Index Copy II in respect of Agreement for Sale executed on 07.08.1975 in respect of the Suit Property by Mr. Shankar Mhatre in favour of Mr. Cawas Rustam Nazir to show the Said Agreement is not executed by all the Legal heirs of Bhaskar Mhatre whose names are appearing in the Mutation Entry No.529 certified on 04.12.1951 to establish that the Agreement is invalid and not binding on the Appellant.

11. It is seen that the revenue receipts are of the year 1967, 1968 and 1975, Index II is of the year 1968 and Index II is in respect of Agreement for Sale executed in 1975.

12. Ld. Advocate of the respondents at the time of argument has brought my attention to the fact that the certified copy of Index II of 1968, was issued to the appellant on 10.01.1995 and the certified copy of the Index II in respect of Agreement For Sale executed in 1995, was issued on 11.02.2011. Furthermore, the revenue receipts are of the year 1967, 1968 and 1975. By no flight of imagination it can be believed that the appellant had no resource to produce these receipts before the Trial Court.

13. The appellant has also relied upon the electricity bills of the year October 2008, January 2010 and May 2006 which are in the name of the power of attorney holder of the appellant. These are old documents and have no details about the suit property. No plausible explanation has come forth as to why these electricity bills and also the consolidated Consumer Personal Ledger in the name of appellant's power of attorney holder regarding the use of electricity could be produced at the time of trial.

14. Furthermore, the appellant has produced the Mutation Entry of 439 in favour of the appellant to show that the appellant's father was an 'Agriculturist'. The Mutation Entry

produced could have been easily obtained by the appellant at the time of trial.

15. It is contended by the appellant in his application that the said documents were not within his knowledge and they were found recently as Mahadev Bhangre died on 11.03.1969 and at the time of his death, his son was hardly 18 years old and so was not able to understand the documents. Even the power of attorney holder was not able to locate the documents to lead before the Trial Court. It is seen that the suit was filed in the year 2000. The appellant at that time must be around 50 years old. So these reasons as stated by the appellant does not help him in any way. What prevented him from producing these documents during the entire period of trial i.e. from the year 2000 when the suit was filed and till 2011, when after 11 years the suit was decided by the Trial Court. Even now, wherein the appeal is of the year 2012 and today after 13 years i.e. till 2025 what prevented him from procuring the said documents, cannot be understood.

16. Lastly, the School Leaving Certificate of the daughters of the servant of the appellant is filed to show that the servant was residing with the appellant in the suit property during the relevant period. However, the said document which was issued on 04.11.2025, appears to be an after thought.

17. Furthermore, though the appellant has contended that some documents were not produced during trial due to the

inadvertance of his advocate representing him in the Trial Court, however, the said statement has been made in a very causal manner. Nothing specific has been stated by the appellant as to which documents had been obtained by him at the time of trial but not produced by his advocate at that time. Further, some amount of vigilance is expected from the contesting party as well i.e. the appellant, to ensure that his case is being properly presented by his appointed attorney.

18. Thus, after going through the entire record available before me, I am of the considered view that allowing the present application will cause indefinite delay to the present appeal which has been expedited and has been made 'time bound' by the Hon'ble High Court and would also cause grave injustice to the respondents. Hence, following order is passed:-

Order

Application (Ex.87) is rejected.

Sd/--

Alibag.
Date : 06.11.2025

Dr. (Smt.) Srishty Neelkanth
District Judge-1, Raigad-Alibag.