

MHST01-000213-2023



**IN THE COURT OF DISTRICT JUDGE-2, SATARA : AT SATARA
REGULAR CIVIL APPEAL No.11 of 2023**

Somnath Brijalal Bhatiya & Ors. ...Appellants

V/s.

Ankush Bhagwan Gore & Ors. ...Respondents

Mr.D.I.S. Mulla, Advocate for the appellants.

Mr.A.S. Khot, Advocate for respondent No.1

**Coram : Mr. S. R. Tamboli,
District Judge-2, Satara.**

:: ORDER BELOW EXH.73 ::

In the instant application, the respondent No.1 prayed to adduce the additional evidence as per Order 41 Rule 27 of the Civil Procedure Code.

02. Mr.A.S. Khot, the Ld. Counsel for the respondent No.1 submitted that this appeal is preferred against the judgment dtd. 16.11.2022 passed in R.C.S.No.115/2003. During the pendency of suit and appeal, the proceeding was going on in the revenue department. On 24.10.2024, the Deputy Superintendent of Land Record gave judgment and as per said judgment, the map was prepared as per measurement carried out by M.R.No.115/2023. Said map has been prepared after the impugned judgment. Said document

was not in existence during the trial of the suit. The map is a public document. Hence, he prayed permission to adduce the evidence.

03. Per contra, Mr.D.I.S. Mulla, the Ld. Counsel for the appellants submitted that the map shows that, it was prepared on 29.08.2023. The decision has been given by Deputy Superintendent of Land Record on 24.10.2024. There is contradiction in the contention of the respondent. Respondent didn't produce the document due diligently. Prior to transfer of appeal to this Court, appellant completed his argument. Thereafter, respondent No.1 produced the document. Further, this document is contrary to the earlier map produced at Exh.238. The map is produced to fill-up the lacuna. No reason assigned for producing the document at the belated stage. Hence, he prayed to dismiss the application.

04. Mr.D.I.S. Mulla, the Ld. Counsel for the appellants relied upon the following citations :-

(i) ***Union of India Vs.Ibrahim Uddin 2012(5) ALL MR 462 S.C.*** :- In this case, the Hon'ble Apex Court observed that additional evidence can be received at the appellate stage only in exceptional circumstances. Appellate Court cannot allow fresh evidence for removing the lacuna. Such application needs to be considered along with the main appeal. Appellant who is not diligent in producing the document is not entitled to produce additional evidence.

(ii) ***A. Andisamy Chettiar Vs. A.Subburaj Chettiar 2016 ALL SCR 190*** :- In this case, the Hon'ble Apex Court observed that parties are not allowed to fill-up the lacuna at the appellate stage. The parties are not entitled to produce the additional evidence except in

three situations as mentioned in Order 41 Rule 27 of the Civil Procedure Code.

(iii) *Motilal Agarwal & Anr. Ram Babu Sharma & Ors. 2025(2) ALL MR (Journal) 6* :- In this case, the Hon'ble Jharkhand High Court observed that no party can be permitted to produce additional evidence beyond the pleading.

05. There cannot be two opinions about the ratio laid down in the aforesaid cases. In the present case, respondent No.1 is coming with specific case that during the trial of suit and appeal, the proceeding was pending before the revenue officers. After the judgment of the Ld. Trial Court, Deputy Superintendent of Land Record gave the judgment and confirmed the measurement carried out by M.R.No.115/2023. Therefore, it is clear that the map was not in existence during the trial of suit. Therefore, the case of respondent No.1 falls under Clause (aa) of Order 41 Rule 27 of the Civil Procedure Code.

06. The Ld. Counsel for the appellants contends that, it was necessary to produce the document prior to completion of his argument. However, Clause (aa) of Order 41 Rule 27 of the Civil Procedure Code, contemplates the time when impugned decree was passed. Therefore, at the time of passing impugned decree, the document was not in existence. Therefore, subsequent delay in producing document in the appeal is no ground to reject the application. The map is prepared by the revenue department. Whether it contradicts with the earlier document ? It is a matter of evidence. The map was not in existence at the time of passing decree.

Therefore, there was no question of exercising due diligence before the Ld. Trial Court in producing the document. Appellants are entitled to produce the additional evidence. The citations relied by the Ld. Counsel for appellants are not helpful to support his contention. Hence, I am inclined to allow the application.

06. Accordingly, application is allowed. Respondent No.1 is permitted to produce additional evidence.

Place : Satara
Date : 19.06.2025.

(S.R. Tamboli)
District Judge-2, Satara.