

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

APPEARANCE

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

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

Mr.A.K.Shinde, Advocate for respondent No.2.

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

:: ORDER BELOW EXH.79 ::

In the instant application, the appellants prayed to adduce the additional evidence as per Order 41 Rule 27 of the Civil Procedure Code.

02. Mr.D.I.S. Mulla, the Ld. Counsel for appellants submitted that respondent No.1 filed application (Exh.73) for producing the additional evidence as per Order 41 Rule 27 of the Civil Procedure Code. This Court allowed the application and permitted respondent No.1 to produce the map prepared as per M.R.No.115/2023. Said measurement was carried out on 24.10.2024 illegally. In said map,

the location of suit property has been changed. Said measurement has not been carried out as per order of the S.D.O. Respondent No.1 had filed application for carrying the measurement. On the basis of the same, map has been prepared. Prior to that, on 02.11.2022 the property in dispute was measured as per order of the S.D.O. Hence, it is necessary to produce the map of the said measurement. The appellants have right to adduce rebuttal evidence in regard to the map produced by the respondent No.1 as per application (Exh.73). Further, the appellants wants to show that the said measurement was carried out on the basis of application filed by the respondent No.1. Hence, the appellants have right to adduce evidence of rebuttal. The appellants obtained the map prepared as per M.R.No.115/2023 by making collusion with the revenue officers. By virtue of the said map, respondent No.1 wants to make change in the revenue record which is in existence since last 20 years. Hence, permission be granted to produce the map and application filed by the respondent No.1 for measurement and notice issued to the appellants for measurement of the sub-division.

03. He further contends that it was not possible for appellants to produce this map even-after exercising due diligence during the trial of suit. The appellants completed their evidence before 29.04.2022. Thereafter, the matter was posted for judgment on 16.11.2022. The present map is prepared as per letter of the S.D.O. on 22.10.2022. Said map is prepared on 02.11.2022. The judgment is pronounced on 16.11.2022. There is a time gap of 14 days. Hence, the appellants could not file the document even-after exercising due

diligence. The appellants have right to produce the additional evidence of the map. Other documents have been prepared after pronouncement of the judgment. Hence, he prayed that permission be granted to produce the document.

04. To support his contentions, he placed reliance on the decision of the Hon'ble Apex Court in the case of *Akhilesh Singh vs. Lal Babu Singh and Ors., MANU/SC/0191/2018*. Relying on the ratio laid down in the said case, the learned Counsel for the appellants contends that appellants have right to adduce the rebuttal evidence.

05. Per contra, Mr.A.S. Khot, the learned Counsel for the respondent No.1 submitted that map is prepared on 02.11.2022. It means, it was prepared prior to 16.11.2022. Prior to delivery of the judgment, appellants could have produced the document. The document was in the custody of appellants. However, they did not produce before the Court till 03.07.2025. They did not file it along with the appeal. The appellants did not exercise due diligence before the learned Trial Court or the Appellate Court. Respondent No.1 produced map as per M.R.No.115/2023. As it was prepared during pendency of the appeal, hence this Court rightly allowed the application. The appellants did not produce the map dtd. 02.11.2022 during the trial or along with appeal. Hence, application of the appellants is not bonafide. Hence, he prayed to dismiss the application.

06. Mr.A.K. Shinde, the learned Counsel for the respondent No.2 supported the argument of learned Counsel for the respondent

No.1. He contends that the document has no relevancy to the subject matter of the suit. It is not a public document. Respondent No.1 was not party to the proceeding. The map prepared for particular purpose is not admissible. If application is allowed, the complications will arise. It will become incumbent to remand the matter. Hence, he prayed to dismiss the application.

07. In the present case, the respondent No.1 filed application (Exh.73) and prayed permission to adduce the additional evidence. This Court allowed the application of the respondent No.1 and permitted him to produce the map prepared as per the measurement bearing M.R.No.115/2023 on the ground that the map is prepared during pendency of the appeal. The respondent No.1 is relying on the said document. Therefore appellants have right to adduce the evidence of rebuttal.

08. In the case of Akhilesh Singh (Supra), the Hon'ble Apex Court observed as under :-

“13. Order LXI Rule 2 provides that the Appellant shall not, except by leave of the court, be allowed to urge any ground in the appeal, which is not set forth in the memorandum of appeal. The proviso to Order LXI Rule 2 engrafts a rule, which obliged the Court to grant a sufficient opportunity to the contesting party, if any new ground is allowed to be urged by another party, which may affect the contesting party. The provision engrafts Rule of natural justice and fair play that contesting party should be given opportunity to meet any new ground sought to be urged. When Appellate Court admits the additional evidence Under Order LXI Rule 27, we fail to see any reason for not following the same course of granting an opportunity to the contesting party, which may be affected by acceptance of additional evidence.

14. A three-Judge Bench of this Court in Land Acquisition Officer, City Improvement Trust Board v. H. Narayanaiah and Ors., MANU/SC/0382/1976 : (1976) 4 SCC 9 had occasion to consider Order LXI Rule 27 in context of admission of additional evidence by Appellate Court. This Court had observed that in event the High Court admits an additional evidence, an opportunity should have been given to the other party to rebut any inference arising from its existence by leading evidence. In Para 28 of the judgment, following has been laid down:

15. To the same effect is another judgment of this Court in the case of Shalimar Chemical Works Limited v. Surendra Oil and Dal Mills (Refineries) and Ors., MANU/SC/0645/2010 : (2010) 8 SCC 423. In this case also, the Court had occasion to consider Order LXI Rule 27, this Court has again laid down that when documents are taken in additional evidence, an opportunity ought to have been given to other party to lead evidence in rebuttal. In the above case also, the High Court simultaneously proceeded to decide the appeal alongwith admitting additional evidence on record. In Paragraphs 16 to 18 following has been laid down:

16. The learned Single Judge rightly allowed the Appellant's plea for production of the original certificates of registration of trade mark as additional evidence because that was simply in the interest of justice and there was sufficient statutory basis for that under Clause (b) of Order 41 Rule 27. But then the Single Judge seriously erred in proceeding simultaneously to allow the appeal and not giving the Respondent-defendants an opportunity to lead evidence in rebuttal of the documents taken in as additional evidence."

09. The ratio laid down in the aforesaid case clearly shows that when documents are taken in additional evidence, an opportunity ought to have been given to other party to lead evidence in rebuttal. In the present case, respondent No.1 produced the map as per application (Exh.73). Hence, appellants have right to adduce the evidence of rebuttal.

10. Apart from this, the record of the case shows that on 07.10.2022 & 10.10.2022, the respondents completed the argument. Thereafter, matter fixed for reply argument. The last reply argument completed on 11.11.2022. The map might have been prepared on 02.11.2022.. It doesn't mean that its copy was received by the appellants on 02.11.2022. Therefore, though the document is prepared before the trial, it can not be inferred that appellants had opportunity to produce the document before the learned trial Court.

11. As earlier stated, as per the ratio laid down in the case of Akhilesh Singh (Supra), the appellants have right to adduce the evidence of rebuttal.

12. Accordingly, application is allowed. Appellants are permitted to produce the additional evidence.

Place : Satara
Date : 22.08.2025.

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