



2026:CGHC:3258

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

SA No. 598 of 2018

1 - Pradeep Kumar Sharma S/o Late S D Sharma Aged About 49 Years R/o Tikrapara, Bilaspur, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

... Petitioner(s)

versus

1 - Mukundrai Parekh (Deleted) As Per Hon'ble Court Order Dated 13-09-2021.

2 - Pankaj Mukundrai Parekh S/o Mukundrai Parekh R/o Parekh Jewellers Sadar Bazar, Bilaspur, Tahsil And District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

3 - Smt. Geeta Parag Kumar Parekh W/o Parag Kumar Parekh R/o Tribhuwan Das Jiwan Bhai Jewellers, High Court Road, Dharampeth , Nagpur Maharashtra., District : Nagpur, Maharashtra

... Respondent(s)

For Appellant	:	Shri H.B. Agrawal, Senior Advocate alongwith Ms. Swati Agrawal, Advocate.
For Respondents No. 2 & 3	:	Shri Aditya Bharadwaj, Advocate.

Hon'ble Shri Justice Rakesh Mohan Pandey
Judgment On Board

20.1.2026

1) The plaintiff has preferred this second appeal under Section 100 of CPC assailing the judgment and decree passed by the learned Fifth Additional District Judge, Bilaspur, District Bilaspur passed in Civil Appeal No.43-A of 2018 dated 31.8.2018, whereby the appeal preferred by the plaintiff was dismissed and the judgment and decree passed by the learned trial Court was affirmed.

2) This appeal was admitted for hearing on 23.3.2023 on the following substantial questions of law:

“1. Whether the learned First Appellate Court was justified in rejecting the application of the appellant under Order 41 Rule 27 of CPC?

2. Whether the findings recorded against Issues No.1 & 3 are illegal?”

3) The plaintiff filed a suit for declaration of title and permanent injunction inter alia on the ground that the suit property i.e. Survey No.716/62 admeasuring 4 decimals, situated at Zuna Bilaspur, Patwari Circle No.22, Tehsil and District Bilaspur was purchased by Smt. Chandravathi Sharma through a registered sale deed dated 9.8.1971 from Ratanlal Sharma. The boundaries of the suit property are as under:

“North - 20 feet road,
South - plot of Mahaveer Prasad,
East - plot of Balveer Singh, and
West – plot of Santlal.”

The total area of the suit land as mentioned in the civil suit is 1900 sq.ft.

4) Smt. Chandravathi Sharma was the grandmother of the plaintiff.

After her death, the property was recorded in the name of Smt. Satya Sharma, the mother of the plaintiff. Smt. Satya Sharma executed a will deed in favour of the plaintiff on 1.6.1998. The plaintiff further pleaded that the order of diversion was passed by the Competent Revenue Authority in favour of Smt. Satya Sharma. The plaintiff further pleaded that on 26.8.1998 when he visited the site, he found ongoing construction over the suit property by the original defendant Smt. Manjula Devi. The plaintiff pleaded that the original defendant encroached over the suit land without any right or title, and therefore, the plaintiff sought relief of declaration of title and permanent injunction. The original defendant – Smt. Manjula Devi filed a written statement denying the averments made in the plaint. She pleaded that Survey No.716/59 admeasuring 1800 sq.ft. was purchased by her in sale consideration of Rs.63,000/- from one Suritram through a registered sale deed dated 12.7.1993 and since then, she was in possession. She pleaded that the construction work was started over Survey No.716/59. It was further pleaded that on 12.11.1997, a demarcation was conducted by the Revenue Inspector in presence of adjacent land owners, wherein it was found that the purchased land of the plaintiff was not available on the spot. The defendant further pleaded that she was in possession of 1,750 sq.ft. out of 1800 sq.ft. and that construction was being raised only over the over 1,750 sq.ft. It was also pleaded that the boundaries

of Survey No.716/59 and 716/62 are entirely different and that the suit filed by the plaintiff is misconceived.

5) Learned trial Court framed Issue No.1 & 3, namely:

“Issue No.1: Whether the defendant has raised construction after encroaching over Survey No.716/62 admeasuring 1900 sq.ft.? and

Issue No.3 is whether the plaintiff is title holder of the suit property?

Both the issues were decided against the plaintiff and suit was dismissed.”

6) Aggrieved thereby, the plaintiff preferred the first appeal under Section 96 of the CPC and also filed an application under Order 41 Rule 27 of CPC thereof. The plaintiff placed on record the sale-deeds executed by Annapurna Pandey in favour of Rajendra Kumar Laajras dated 7.12.2001 pertaining to Survey No.716/1 and 716/61; sale-deeds executed by Ratanlal in favour of Santulal dated 18.2.1970. The sale-deed executed by Ratanlal in favour of Balbeer Singh pertaining to Survey No.716/1 dated 9.8.1971. The sale-deed executed by Balbeer Singh in favour of Venkat Rao dated 18.9.1972; and relevant revenue records. Learned Appellate Court rejected the application moved under Order 41 Rule 27 of CPC and dismissed the appeal too.

7) The plaintiff preferred this second appeal against the judgment passed by the learned First Appellate Court alongwith an application under Order 41 Rule 27 of CPC. The plaintiff has placed on record a demarcation report conducted by the Revenue

Inspector pursuant to the order passed by the Tehsildar dated 28.2.2018 wherein a specific finding has been recorded that Pankaj Mukundrai Parekh, son of the original defendant, failed to submit the documents to ascertain boundaries.

- 8) Learned Senior Advocate would argue that the Survey No.716/62 was purchased by Smt. Chandravathi Sharma through a registered sale-deed on 9.8.1971. He would submit that the original defendant encroached over the suit property and started raising construction and therefore, objection was raised by the plaintiff and thereafter, the suit was filed. He would contend that the plaintiff and his witnesses have proved the fact that the original defendant encroached over Survey No.716/62. He would contend that to substantiate this fact, sale-deeds executed by various persons in favour of the adjacent land owners were produced before the learned First Appellate Court alongwith an application under Order 41 Rule 27 of CPC but the said application was rejected by the learned Court below. He has placed reliance on the judgment passed by this Court in the matter of **South Eastern Coalfields Limited vs. State of C.G. and Another**, reported in **2010(3) CGLJ 64** and **Nageshwar Prasad Singh vs. Durga Devi and Another**, reported in **2010(1) CGLJ 355**. He would contend that the documents were filed strictly in accordance with the provisions of Order 41 Rule 27 of CPC and those documents were relevant for just adjudication of the case, therefore, learned Lower Appellate Court ought to have

allowed the application.

- 9) On the other hand, learned counsel appearing for respondents No.2 & 3 would submit that though an application under Order 41 Rule 27 of CPC was moved by the plaintiff but relevancy of those documents was not discussed in the said application. He would contend that the application was not moved in accordance with the provisions of Order 41 Rule 27 of CPC, therefore, the learned First Appellate Court has rightly rejected it.
- 10) Heard learned counsel for the parties and perused the application and attached documents.
- 11) Order 41 Rule 27 of CPC, 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) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

- 12)** A bare reading of the above-quoted provisions would make it clear that the additional evidence may be admitted by the Appellate Court only in cases where the Court below has refused to admit evidence, or where, despite exercise of due diligence, the parties could not produce such evidence before the Courts below, or where the Appellate Court requires such additional evidence for proper adjudication of the case.
- 13)** In the matter of **Nageshwar Prasad Singh** (supra), it is held that the application for admitting or rejecting additional evidence should be decided at the time of final disposal of the appeal.
- 14)** In the present case, the application is being decided at the time of final hearing of this second appeal. As the plaintiff failed to plead and substantiate the relevancy of the documents filed alongwith an application under Order 41 Rule 27 of CPC, therefore, the learned First Appellate Court has rightly rejected the said application. Accordingly, the substantial question of law No.1 is answered in negative and against the plaintiff.
- 15)** Now, coming to the second substantial question of law, the learned Trial Court decided issue No.1 & 3 against the plaintiff. In the plaint, the plaintiff specifically pleaded that the original defendant had encroached over Survey No.716/62 and started raising construction thereon. To prove this fact, the plaintiff examined himself as (PW-1) and Balbeer Singh as (PW-2). The plaintiff described boundaries of the suit property but admitted that he never

approached the revenue authorities for demarcation. He further admitted the fact that he is still in possession of the suit property. Balbeer Singh (PW-2) stated that he purchased the plot out of Survey No.716/1 in the year 1971. In cross-examination, this witness admitted that the suit property was irregular in shape. Ex.P/2(C) is will deed executed by Smt. Satya Sharma in favour of the plaintiff, which is not relevant as there is no dispute with regard to execution of will deed. Ex.P/4(C) is the map of Survey No.716. Ex.P/5(C) and P/6©, being revenue records would show that Survey No.716/62 was recorded in the name of Smt. Satya Sharma. Ex.P/7C is a sale-deed executed by Ratanlal in favour of Smt. Chandravathi Sharma and boundaries are specifically described. Ex.P/9C is a complaint made to the police. Perusal of sale-deed Ex.P/7 and sale-deed Ex.D/1 executed by Suritram in favour of Smt. Manjula Devi would reveal that the boundaries are entirely different. Thus, the plaintiff failed to prove the fact that the original defendant encroached over the survey No.716/62 and started raising construction.

- 16)** Learned Courts below have recorded concurrent findings after due appreciation of oral and documentary evidence. The plaintiff failed to move an application under Order 26 Rule 9 of CPC for appointment of a Commissioner for demarcation of the suit property and at second Appellate stage, a demarcation report has been placed on record alongwith an application under Order 41 Rule 27 of CPC. The demarcation report does not establish that the original

defendant encroached over the suit property. Further, the said document was not in-existence at the time of filing of the civil suit. Therefore, according to the provisions of Order 41 Rule 27 of CPC, the application moved by the plaintiff cannot be allowed.

17) Taking into consideration the above-discussed facts, the substantial question of law No.2 is answered in negative and against the plaintiff.

18) Consequently, the appeal fails and is hereby **dismissed**.

Sd/-

(Rakesh Mohan Pandey)
JUDGE