

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**RSA No. 89 of 2008****Reserved on: 18.08.2026****Date of Decision: 25.08.2026**

Hem Raj & Anr.**...Appellants****Versus****Guddi and others****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Appellants : Mr Atharv Sharma, Advocate.****For the Respondents : Mr Lakshay Thakur, Advocate.
No.1(a) to 1(d), and 1(f) to
1(i)**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment dated 31.12.2007 passed by the learned Presiding Officer, Fast Track Court, Mandi, District Mandi (learned Appellate Court), vide which the judgment and decree dated 12.06.2003 passed by learned Sub Judge, First Class, Court No. 1 Mandi (learned Trial Court) were upheld. *(The parties shall hereinafter be referred to in the same*

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

manner as they were arrayed before the learned Trial Court for convenience).

2. Briefly stated, the facts given in the present appeal are that the plaintiff filed a civil suit for possession of the suit land mentioned in para 1 of the plaint. It was asserted that the plaintiff is the co-owner of the suit land. The defendant no. 1 came to the plaintiff's father about 28 years before filing the suit and said that he was evicted by his landlords from the tenancy land. Defendant no. 1 was the son-in-law of the plaintiff's father. Plaintiff and his father allowed defendant no. 1 to stay on a portion of the suit land. Plaintiff constructed two Kachha tin roof rooms and permitted defendant no. 1 and his family members to reside in them. One room had fallen before the institution of the suit. The plaintiff revoked the permission in May, 1995, as defendant no. 2 started causing disputes and filing frivolous suits against the plaintiff and his brother. The defendant no. 1 is residing in an old age home. But the defendant no. 2 is residing in the room along with his family members. The defendants have no right to retain possession after the revocation of the license. Hence, it was prayed that the suit be decreed and the possession of the suit land be delivered to the plaintiff.

3. The suit was opposed by filing a written statement taking preliminary objections regarding the suit being bad for non-joinder of necessary parties, the suit being not properly valued for Court fees and jurisdiction, suit being bad for mis-joinder of causes of action and plaintiff being estopped by his act and conduct to file the present suit. The contents of the plaint were denied on merits. It was asserted that defendant no. 1 came to Sanyadi about 40 years before the institution of the suit. He constructed a residential house upon the suit land and was continuously residing on the suit land with his family members. The plaintiff is not the sole owner of Khasra no. 53, and other co-sharers were necessary parties to the suit. The plaintiff had not granted any permission to the defendant no. 1, and he was not entitled to revoke the permission. The suit was filed without any basis; hence it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The learned Trial Court framed the following issues on 12.01.2001: -

- (i) Whether the defendants are in occupation of Khasra No. 53/1 without right, title and interest, as alleged? OPP.

- (ii) Whether the suit is bad for non-joinder of necessary parties, as alleged? OPD.
- (iii) Whether the suit is not correctly valued for the purpose of court fee and jurisdiction, as alleged? OPD.
- (iv) Whether the suit is bad for mis-joinder and cause of action, as alleged? OPD.
- (v) Whether the plaintiff is estopped by his act and conduct to file the present suit, as alleged? OPD.
- (vi) Relief.

6. The parties were called upon to produce the evidence and the plaintiff examined himself (PW1). Defendant No.2 examined himself (DW1).

7. The learned Trial Court held that Defendant No. 1 had filed a previous suit against the plaintiff and other co-sharers in which the defendant No. 1 was held to be in possession of one room. A liberty was granted to the present plaintiff and other co-sharers to seek ejectment of Defendant No. 1 as per the law. The defendants had taken a plea of adverse possession. However, this plea was not established. The defendants had failed to prove that the construction was raised by them. The plaintiff was entitled to take possession in terms of the judgment and decree previously passed by the Court. Hence, learned Trial Court answered issue No. 1 in the affirmative, issues No. 2 to 5 in the negative and decreed the suit.

8. Being aggrieved by the judgment and decree passed by learned Trial Court, the defendants filed an appeal, which was decided by learned Presiding Officer, Fast Track Court, Mandi, District Mandi (learned Appellate Court). Learned Appellate Court concurred with the findings recorded by learned Trial Court that the plaintiff was the owner of the suit land. The defendants had no right to retain possession. The plea of adverse possession taken by the present defendants in the previous suit was not accepted, and it was held that the plaintiff was entitled to take possession as per the law. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed the present appeal, which was admitted on one substantial question of law, but the Court held on 17.07.2026 that the appeal would also be heard on the additional substantial questions of law. Hence, the following substantial questions of law arise for determination in the present case:

- (i) Whether the impugned judgments and decrees stand vitiated on account of non-framing of issues arising out of pleadings of the parties?
- (ii) Whether the impugned judgment and decree passed by Ld. First Appellate Court stand vitiated firstly on account of considering the application under Order 41 Rule 27 CPC prior in time than hearing final

arguments and secondly on account of wrong rejection of the same?

- (iii) Whether findings by the learned Courts below, by basing the same solely on Ext.PA are bad and more particularly against appellant No.2 who was not a party?

10. I have heard Mr Atharv Sharma, learned counsel for the appellants and Mr Lakshay Thakur, learned counsel for respondents No.1(a), 1(d), 1(f) and 1(i).

11. Mr Atharv Sharma, learned counsel for the appellants, submitted that the learned Courts below had not framed any issue regarding the adverse possession even though a specific plea was taken to this effect in the written statement. The defendants were prejudiced by non-framing of the issues as they were prevented from leading the evidence in support of their plea of adverse possession. The defendants had filed an application for additional evidence before the learned Appellate Court, which was dismissed by the learned Appellate Court on 31.12.2007 before dismissing the appeal. This is impermissible because the application for additional evidence has to be decided along with the main appeal. Therefore, he prayed that the present appeal be allowed and the matter be remitted to the learned Appellate Court for deciding the application for additional evidence as per the law. He relied upon the judgments in *State of Rajasthan versus T.N. Sahani and others*

2001(10) SCC 619 and Madan Lal vs. Suresh Kumar 2026:HHC:23562
in support of his submissions.

12. Mr Lakshay Thakur, learned counsel for respondents No.1(a), 1(d), 1(f) to 1(i) submitted that the defendants had led the evidence regarding the adverse possession, the learned Courts below had recorded the findings regarding the adverse possession, and there was no prejudice to the defendants by non-framing of the issues. The learned Appellate Court had dismissed the application by passing a reasoned order, and there is no infirmity in deciding the application before the decision of the appeal. Therefore, he prayed that the present appeal be dismissed.

13. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.2:

14. The defendants had preferred an appeal which was decided by the learned Presiding Officer, Fast Track Court, Mandi. They filed an application for leading additional evidence for producing the certified copy of the judgment and decree along with a certified copy of Missal Haqiyat. The learned Appellate Court held, vide order dated 31.12.2007, that there was nothing to show how the application under Order 41 Rule 27 was maintainable and

that the judgment and decree were material for the just decision of the case. Hence, the application was dismissed. Thereafter, the arguments were heard, and the matter was posted for judgment.

15. It was laid down by the Hon'ble Supreme Court in *State of Rajasthan versus T.N. Sahani* (supra) that an application for additional evidence is to be decided along with the main appeal because only then can the Court determine whether the documents are required for pronouncing the judgment more satisfactorily. It was observed:

4. It may be pointed out that this Court as long back as in 1963 in *K. Venkataramiah v. Seetharama Reddy* [AIR 1963 SC 1526] pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner, it would have allowed the same; if not, the same would have

been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further, the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.

16. This position was reiterated in *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148: 2012 SCC OnLine SC 528, wherein it was observed at page 172:

52. Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.

17. Allahabad High Court also held in *Chandra Deo Tyagi v. ADJ*, 2020 SCC OnLine All 849 that it is impermissible to decide an application for additional evidence separately from the main appeal. It was observed:

60. The impugned order suffers from non-application of judicial mind to the legal requirements for consideration.

The stage of consideration, as per the settled law, is at the time of consideration of the appeal on merits but in the present case, the application has been decided at a stage prior to consideration of the appeal on merits and as such the relevant consideration of appreciating the evidence on record to reach the conclusion that the additional evidence was required to be taken on record to pronounce satisfactory judgment in appeal is lacking in the impugned order. Any such satisfaction that the proposed additional evidence was required for deciding the appeal in a satisfactory manner by the appellate court is not manifested in the impugned order.

18. This position was reiterated in *Chowdappa v. Hanumantharayappa*, 2026 SCC OnLine SC 1509, wherein it was observed:

12.2 The Application must be considered simultaneously with the hearing of the main Appeal on its merits to determine whether the Court “requires” the documents to pronounce Judgment or for any other substantial cause. (*North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (Dead) By LRs.* (2008) 8 SCC 511)

19. This Court has also taken a similar view in *Madan Lal* (supra).

20. Therefore, there is a force in the submission of learned counsel for the appellants that the learned Appellate Court erred in deciding the application for additional evidence separately and not with the main appeal as is required under law. Hence, the matter is required to be remitted to the learned Appellate Court for a fresh consideration of the application along with the main appeal as per

the law, and this substantial question of law is answered accordingly.

Substantial Question of Law No. 1 and 3:

21. Since the matter is being remitted to the learned Appellate Court for a fresh decision, these substantial questions of law have become redundant.

Final Order:

22. In view of the above, the present appeal is allowed, and the judgment and decree dated 31.12.2007 passed by the learned Appellate Court are set aside. The matter is remitted to the learned Appellate Court for deciding the application for additional evidence along with the main appeal and thereafter disposing of the appeal as per the law. The parties through their learned counsel are directed to appear before the learned Appellate Court on 22.9.2026.

23. Pending application(s), if any, also stand(s) disposed of.

24. The observations made hereinabove are regarding the disposal of this appeal and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

25th August, 2026
(Nikita)