2026 INSC 211

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APELLATE JURISDICTION

CIVIL APPEAL NOS. 5168-5169 OF 2011

GOBIND SINGH AND ORS. ...APPELLANT(S)

VERSUS

UNION OF INDIA AND ORS. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. The present appeals, by special leave, are directed against the judgment dated 12th August, 2009, and the subsequent judgment rendered in review on 15th March, 2011, by the High Court of Madhya Pradesh, Bench Gwalior,[1] in First Appeal No. 80 of 1996 and Review Petition No. 300 of 2009, respectively whereby the appeal filed by the Union of India was allowed and the review of the appellant was dismissed. By the aforesaid orders, the judgment and decree dated 25 March 1996 passed by the Court of the Vth Additional District Judge, Gwalior[2], in Civil

[1] Hereinafter, referred to as "High Court".
[2] Hereinafter, referred to as "Civil Court".

Suit No. 5-A of 1990 was set aside and the suit was dismissed.

2. The appellants[3] herein instituted in Civil Suit No. 5-A of 1990, seeking a declaration of title and a decree of permanent injunction against the defendants[4]. Respondent Nos. 1 to 4 were arrayed as defendant Nos. 1 to 4, respectively, in the said suit.

FACTS OF THE CASE: -

3. The facts, insofar as they are necessary for the disposal of the present appeals, are set out hereinafter: -

3.1. The case of the appellant-plaintiffs is that the land bearing Survey No. 2029, admeasuring 8 Bighas and 10 Biswas, situated in Patwari Halqa No. 51, opposite Baaj Cinema Hall, Murar, Pargana and District Gwalior, is owned and possessed by them. It is alleged that on 4th December, 1989 officers of the respondent-defendants entered upon the suit property with the intent to remove the wire fencing erected thereon, the two shops constructed by the plaintiffs, as well as the standing crops on the said land.

[3] Hereinafter, referred to as "appellant-plaintiffs".
[4] Hereinafter, referred to as "respondent-defendants".

3.2. In this backdrop, the appellant-plaintiffs instituted a civil suit, being Civil Suit No. 55A of 1989[5], on 5th December, 1989 before the Civil Court, seeking a declaration of title and a decree of permanent injunction restraining the defendants from interfering with the suit property. The appellant-plaintiffs asserted that the suit property constituted their ancestral property and that their forefathers had been in continuous ownership and possession thereof for the preceding fifty years.

3.3. The Trial Court, *vide* judgment dated 26th March, 1996, decreed the suit, holding that the title, ownership and possession of the suit property vested in the appellant-plaintiffs, and that the respondent-defendants had failed to establish any title thereto.

3.4. Aggrieved by the said decree, the respondent-defendants preferred first appeal before the High Court. During the pendency of the appeal, the appellant-plaintiffs filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908[6], seeking to place on record certified copies of the General Land Register maintained by the respondent-defendants. It was the case of the

[5] Re-numbered later as "5-A of 1990".
[6] For short, "CPC".

appellant-plaintiffs that the said documents would demonstrate that the suit property stood recorded as private land.

3.5. The High Court, *vide* judgment dated 12th August, 2009, allowed the appeal preferred by the respondent-defendants, holding that the appellant-plaintiffs had claimed perfection of title on the basis of a decree passed in an earlier suit to which the respondent-defendants were not parties.

3.6. Aggrieved thereby, the appellant-plaintiffs instituted a review petition before the High Court primarily on the ground that the application for additional evidence had not been decided. The High Court, however, by judgment dated 15th March, 2011, dismissed not only the review petition but also the application for additional evidence and affirmed the judgment rendered in the first appeal, while imposing costs of Rs.2,000/-.

4. It is in these circumstances that the appellant-plaintiffs have approached this Court.

SUBMISSIONS ON BEHALF OF THE PARTIES: -

5. Shri Anupam Lal Dass, learned Senior Counsel appearing on behalf of the appellants, assailed the

judgments passed by the High Court and advanced the following submissions: -

5.1. That the High Court acted contrary to law in proceeding to decide the appeal on merits without first adjudicating upon the application filed by the appellant-plaintiffs under Order XLI Rule 27 of CPC for leading additional evidence.

5.2. That the predecessors-in-interest of the appellant-plaintiffs had instituted a civil suit against the State seeking a declaration of title, which was decreed by a court of competent jurisdiction, and that the said judgment has since attained finality.

5.3. That the material on record clearly establishes that the appellant-plaintiffs have remained in continuous and uninterrupted possession of the suit property since the time of their forefathers, and have, therefore, perfected title thereto by way of adverse possession.

5.4. On these premises, the appellant-plaintiffs prayed that the present appeals be allowed and that the impugned judgments of the High Court be set aside.

6. *Per contra*, Shri V. Chitambresh, learned Senior Counsel appearing for the respondents, strongly

opposed the submissions advanced on behalf of the appellants and advanced the following contentions: -

6.1. That the land comprising Morar Cantonment, within which the suit property is situated, vested in the Union Government in the year 1953 upon transfer of ownership from the State Government.

6.2. That the *ex parte* decree passed in the earlier civil suit against the State of MP instituted by the predecessors-in-interest of the appellant-plaintiffs would not be binding on the Union, having been rendered in the absence of the respondent-defendants, who were neither impleaded nor afforded an opportunity of being heard in the said suit.

6.3. The application for additional evidence was misplaced and without any merit. It did not fall within the four corners of the principles and parameters laid down in the Order XLI Rule 27 CPC. The same has been rightly rejected by the High Court while deciding the review petition.

6.4. On these grounds, the respondent-defendants vehemently urged that the present appeals be dismissed and the impugned judgments of the High Court be affirmed.

ANALYSIS AND DISCUSSION: -

7. We have heard the learned senior counsel appearing for the parties and have carefully perused the material placed on record.

8. The limited question that arises for consideration is whether the High Court's omission to expressly adjudicate the application filed under Order XLI Rule 27 of CPC while deciding the first appeal has resulted in any manifest injustice or miscarriage of justice so as to warrant interference by this Court.

9. In order to properly appreciate the controversy involved, it would be apposite to advert to the reasoning adopted by the courts below. While decreeing the suit instituted by the appellant-plaintiffs, the Trial Court recorded the following findings: -

i. That it was an undisputed fact that, in respect of the suit property, a decree dated 9th July, 1984, had already been passed by a competent court in favour of the predecessors-in-interest of the appellant-plaintiffs.
ii. That upon an appraisal of the material placed on record, the appellant-plaintiffs were found to

be in possession and occupation of the suit property in the capacity of owners thereof.

iii. That the respondent-defendants failed to place on record any documentary evidence to substantiate their claim of ownership or possession over the suit property.

iv. That the objection raised by the respondent-defendants regarding the alleged failure of the plaintiffs to disclose the source of their title was rejected, as the documentary evidence on record sufficiently established that the plaintiffs held ownership over the suit property and had been in continuous possession and occupation thereof for a considerable length of time thus consequently, the plaintiffs' ownership stood proved.

10. When the said decree was assailed by the respondent-defendants before the High Court by way of an appeal, the High Court, while allowing the appeal, recorded the following findings: -

i. That the earlier suit instituted by the predecessors-in-interest of the plaintiffs against the State of Madhya Pradesh was decreed *ex parte* by the Civil Court, without the respondent–Union of India having been

impleaded as a party to the said proceedings. It was not binding on the Union of India.

ii. That from the pleadings and evidence adduced in the present suit, it emerged that the plaintiffs' claim over the suit property was founded on adverse possession, predicated on their alleged possession of the land since the time of their forefathers. Their could not be any perfection of rights by adverse possession against the State/Union howsoever long may be the possession.

iii. That the plaintiffs failed to discharge the burden of proving ownership over the suit property, having neither produced any documentary evidence nor examined any witness to establish the point of time at which their forefathers came into possession of the land and on what basis.

iv. That the plaintiffs had sought to claim perfection of title on the basis of adverse possession in the earlier suit filed by their predecessor and, by doing so, procured a decree of declaration without impleading the respondent-defendants. Consequently, the said decree was held to be not binding on the respondent-defendants, and the plaintiffs were

found not to have acquired ownership in the eyes of law.

v. While deciding the review petition the application for additional evidence was also dismissed as being without any merit.

11. In our considered view, the High Court has committed no error in rendering the impugned judgments and, for the reasons that follow hereinafter, we are not persuaded to interfere and are, accordingly, inclined to dismiss the present appeals.

11.1. It is true that the High Court, while delivering the judgment dated 12th August, 2009, did not advert to the application filed by the appellant-plaintiffs under Order XLI Rule 27 of CPC. However, when the said judgment was assailed by way of a review petition, the appellant-plaintiffs specifically contended that the judgment could not be sustained on account of the High Court's failure to consider the application seeking to adduce additional evidence. The High Court, by its subsequent judgment dated 15th March, 2009, dismissed the review petition and, in the process, also rejected the application filed under Order XLI Rule 27 of CPC as being without any merit.

11.2. In order to properly appreciate the controversy involved, it is necessary to first advert to the statutory provision applicable to the case at hand. Order XLI Rule 27 of CPC reads as follows: -

> **"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) . . .
>
> (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 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**."
>
> **(emphasis supplied)**

11.3. Rule 27, being couched in negative terms, makes it abundantly clear that parties to an appeal are not entitled to adduce additional evidence,

whether oral or documentary, save and except in the circumstances expressly enumerated therein. The provision contemplates only three eventualities in which additional evidence may be permitted: *first*, where the court which passed the decree has refused to admit evidence which ought to have been admitted; *second*, where the party seeking to adduce such evidence establishes that, notwithstanding the exercise of due diligence, the evidence was not within its knowledge or could not have been produced at the time when the decree under appeal was passed; and *third*, where the appellate court itself requires any document to be produced or any witness to be examined in order to enable it to pronounce judgment or for any other substantial cause.

11.4. Accordingly, it is only upon satisfaction of any of the aforesaid three contingencies that an application under Order XLI Rule 27 of CPC can be entertained. Sub-rule (2) of the said provision further mandates that where the appellate court forms an opinion that additional evidence is required to be admitted, it must record the reasons for such admission. While elucidating the scope and object of Order XLI Rule 27 of CPC, this Court, in ***Union of***

India v. Ibrahim Uddin,[7] undertook an exhaustive analysis of the provision. The relevant extract is reproduced hereinafter: -

> **"36. <u>The general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment</u>**. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself.
>
> . . .
>
> **38. <u>Under Order 41 Rule 27 CPC, the appellate court has the power to allow a document to be produced and a witness to be examined. But the requirement of the said court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it</u>**

[7] (2012) 8 SCC 148

> **can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence**.
>
> . . .
>
> **41. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this Rule will apply e.g. when evidence has been taken by the lower court so imperfectly that the appellate court cannot pass a satisfactory judgment**."
>
> **(emphasis supplied)**

Thus, a holistic reading of the aforesaid decision makes it clear that the appellate court's inquiry, while considering an application for leading additional evidence, is confined to examining whether such evidence is necessary to remove a lacuna in the case. More importantly, the appellate court may permit additional evidence only upon being satisfied that the conditions expressly stipulated under Order XLI Rule 27 of CPC are fulfilled. The parties do not possess any vested or automatic right to seek admission of additional evidence at the appellate stage. Consequently, the provision has no application

where the appellate court is in a position to render a satisfactory and reasoned judgment on the basis of the evidence already available on record.

11.5. In ***State of Karnataka v. K.C. Subramanya***,[8] the appellants therein had moved an application before the appellate court under Order XLI Rule 27 of CPC seeking leave to produce a map of the area to establish that the disputed land constituted a public road. This Court, while affirming the High Court's decision to reject the said application, held as follows: -

> **"4.** . . .
>
> **On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum**.
>
> **5. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be**

[8] (2014) 13 SCC 468

> **allowed to be done at his leisure or sweet will**."
>
> **(emphasis supplied)**

This Court thus categorically held that unless the requirements stipulated under Order XLI Rule 27 of CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

11.6. Where the appellate court permits additional evidence to be adduced, Order XLI Rule 27(2) of CPC casts a mandatory obligation upon the court to record the reasons for such admission. In ***Ibrahim Uddin*** (*supra*), this Court elucidated the rationale underlying the requirement of recording reasons in the following terms: -

> **"42.** Whenever the appellate court admits additional evidence it *should record its reasons* for doing so (sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record

> of reasons will be useful and necessary for the court of further appeal to see, if the discretion under this Rule has been properly exercised by the court below. *The omission to record the reasons must, therefore, be treated as a serious defect*. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the Rule.**"**

11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the Trial Court. The Appellate Court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the Appellate Court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below.

11.8. In the present case, the High Court, upon an examination of the evidence adduced by the parties, proceeded to analyse the decree passed in the earlier civil suit instituted by the predecessors-in-interest of the appellant-plaintiffs. The High Court observed that the said decree was not binding upon the

respondent-defendants, as they had not been impleaded as parties to those proceedings. Consequently, no legal sanctity could be attached to any subsequent entries made in the revenue records on the strength of the said decree, including the mutation of the plaintiffs' names therein.

11.9. Once the said finding recorded by the Trial Court was set aside, whereby the entire claim of ownership of the appellant-plaintiffs rested upon the earlier decree and the consequent entries in the revenue records, the onus squarely shifted upon the appellant-plaintiffs to independently establish their title to the suit property.

11.10. The appellant-plaintiffs were, from the outset, fully aware that the respondent-defendants had not been impleaded as parties in the earlier civil suit instituted by their predecessors. Having founded their claim upon a decree which was *non-est* insofar as the respondent-defendants were concerned, it was impermissible for the appellant-plaintiffs to seek to introduce additional evidence at the appellate stage to cure the inherent defects in their case. The present suit being one for declaration of title, it was incumbent upon the appellant-plaintiffs, if they indeed possessed a valid title, to adduce their best

and complete evidence at the stage of trial before the court of first instance, where such evidence could have been produced as a matter of right.

11.11. Further, even at the stage of the earlier suit instituted by the predecessors-in-interest of the appellant-plaintiffs, their consistent case was one of lawful title to the suit property. No plea of adverse possession was ever raised against the respondent-defendants. The appellants wish to rely upon the additional evidence, namely, the entries in the General Land Register maintained by the respondent-defendants to show that the suit property is recorded as private land. Such an endeavour, at the appellate stage and in the absence of foundational pleadings, is wholly impermissible in law. Mere recording of the land in suit as private land in the GLR does not in any manner benefit the appellants claim of ownership.

11.12. Once the appellant-plaintiffs asserted that they derived valid title to the suit property through their forefathers, the burden lay squarely upon them to substantiate such claim by producing cogent title deeds in support thereof. However, no such documentary evidence was forthcoming.

11.13. On the other hand, the consistent stand of the respondent-defendants from the inception has been that the appellant-plaintiffs are rank trespassers and encroachers upon the suit property. The respondent-defendants have specifically denied the assertion that the appellant-plaintiffs or their predecessors had been in enjoyment of the suit property for the preceding fifty years prior to the institution of the suit.

11.14. Further, the respondent-defendants have traced their title to the decision of the Union of India dated 17th July, 1953, pursuant to which the suit land, along with other immovable properties, vested in the respondent-defendants in terms of title, ownership and possession. This assertion stands fortified by the Gazette Notification dated 4th November, 1954, issued by the erstwhile State of Madhya Bharat, which also recognises that the suit land and other properties with title, ownership and possession vested in the respondent-defendants.

11.15. The above discussion will also reflect that even if the additional evidence in the form of GLR is accepted, the same will have no impact on the findings returned by the High Court. The application

for additional evidence was thus rightly rejected by the High Court.

11.16. Before parting, we deem it appropriate to record our disapproval of the unscrupulous litigants such as appellant-plaintiffs and their predecessors and the manner in which they have conducted themselves. The material on record indicates that the earlier suit instituted by the predecessors-in-interest of the appellant-plaintiffs culminated in a decree passed without impleading the respondent-defendants, who were the lawful owners of the suit property. The attempt to secure a decree behind the back of the true owner is a circumstance that cannot be lightly brushed aside. It is also not without significance that appellant-plaintiff No. 1, Govind Singh, was employed in the office of the Commissioner at the relevant time. The proximity of events, namely, the passing of an *ex-parte* decree followed by the expeditious mutation of revenue entries in favour of the appellant-plaintiffs, casts a shadow over the bona fides of the proceedings.

11.17. In such a backdrop, when the appellant-plaintiffs themselves asserted title on the basis of long and continuous possession through their predecessors, the subsequent attempt to introduce

additional evidence at the appellate stage assumes little legal significance. Once the trial had concluded and the decree was under challenge in appeal, the appellants could not be permitted to fill the gaps in their case by seeking to adduce further material to fortify a claim that was fundamentally flawed.

12. For the foregoing reasons, we find no infirmity in the judgments rendered by the High Court.

13. Accordingly, the judgments dated 12th August, 2009, in First Appeal No. 80 of 1996 and 15th March, 2011, in Review Petition No. 300 of 2009 passed by the High Court of Madhya Pradesh at Gwalior are hereby affirmed.

14. Consequently, the present appeals stand dismissed.

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

.....J.
[VIKRAM NATH]

.....J.
[SANDEEP MEHTA]

NEW DELHI
MARCH 09, 2026