

GAHC010187502022



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRP(IO)/215/2022**

MD. IDRISH ALI  
S/O- LT. ABDUL JABBAR, R/O- VILL- GARUMARA MOUZA- RANGAGARAH,  
P.O. AND P.S. SAMAGURI, DIST.- NAGAON, ASSAM, PIN- 782140

VERSUS

GANESH DAS AND 4 ORS.  
S/O- LT. SARAT DAS, R/O- VILL- GARUMARA MOUZA- RANGADARA, P.O.  
AND P.S. SAMAGURI, DIST.- NAGAON, ASSAM, PIN- 782140

2:GAURANGA DAS  
S/O- LT. SARAT DAS  
R/O- VILL- GARUMARA MOUZA- RANGADARA  
P.O. AND P.S. SAMAGURI  
DIST.- NAGAON  
ASSAM  
PIN- 782140

3:NITAI DAS  
S/O- LT. SARAT DAS  
R/O- VILL- GARUMARA MOUZA- RANGADARA  
P.O. AND P.S. SAMAGURI  
DIST.- NAGAON  
ASSAM  
PIN- 782140

4:PRAMANANDA DAS  
S/O- LT. SARAT DAS  
R/O- VILL- GARUMARA MOUZA- RANGADARA  
P.O. AND P.S. SAMAGURI  
DIST.- NAGAON  
ASSAM

PIN- 782140

5:ANANDA DAS  
S/O- LT. SARAT DAS  
R/O- VILL- GARUMARA MOUZA- RANGADARA  
P.O. AND P.S. SAMAGURI  
DIST.- NAGAON  
ASSAM  
PIN- 78214

**Advocate for the Petitioner** : MR. A J SARMA

**Advocate for the Respondent** : MR. A BORUA (R1 TO R5)

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT & ORDER (ORAL)**

**02.11.2022**

Heard Mr. S.K. Ghosh, the learned counsel appearing on behalf of the Petitioner and Mrs. P. Bhattacharya, the learned counsel appearing on behalf of the respondents.

2. This is an application under Article 227 of the Constitution challenging the order dated 27/7/2022, whereby the application under Order XLI Rule 27 (1) (b) read with Section 151 of the Code of Civil Procedure, 1908 (for short the Code) praying for allowing the Plaintiff/the Appellant to adduce additional evidence to prove original Sale Deed No. 2983/2009 and Sale Deed No. 2984/2009 was rejected on the ground that the Plaintiff/Appellant was trying to patch up the lacuna in adducing the evidence during the trial which resulted in dismissal of the suit. It was also observed by the First Appellate Court that the Plaintiff side has failed to show any ground to allow the petition under Order XLI Rule 27 of the Code.

3. The learned counsel for the Petitioner has submitted that the First Appellate Court while passing the impugned order failed to take into consideration the stage at which an application under Order XLI Rule 27 (1) (b) of the Code is required to be taken up for consideration. He has referred to the judgment of the Supreme Court rendered in the case of **Union of India Vs. Ibrahim Uddin** reported in **(2012) 8 SCC 148** and more particularly to paragraph Nos.49 to 52, wherein the Supreme Court has observed that an application for taking additional evidence on record at the appellate stage is to be heard at the time of final hearing of the appeal at the stage after appreciating the evidence on record the Court reaches the conclusion that the additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. The learned counsel for the Petitioner has submitted that in the instant case even prior to the hearing of the appeal, the application for taking additional evidence was taken and on the ground that the Plaintiff/Appellant was trying to fill up the lacuna i.e. by producing the original of the Deeds of Sale, the said application was rejected.

4. On the other hand, Ms. P. Bhattacharya, the learned counsel appearing on behalf of the Respondent submitted that though the Supreme Court in the case of **Union of India Vs. Ibrahim Uddin** (supra) have held the stage of consideration of the appeal and she has no quarrel with the said proposition but she submits that the First Appellate Court also is required to take into consideration the judgment of the Supreme Court in the case of **Union of India Vs. K.V. Lakshman** reported in **(2016) 13 SCC 124** wherein the Supreme Court had categorically mandated that if the Appellant is allowed to adduce additional evidence, the Respondent has also to be given an opportunity to give rebuttal evidence.

5. Upon hearing the learned counsel for the parties, this Court would like to take note of the two judgments submitted by both the counsel for the respective parties. The Supreme Court in the case of **Union of India Vs. Ibrahim Uddin** (supra) had at paragraph Nos. 49 to 52 stated the stage of consideration of an application for taking additional evidence on record at the appellate stage. Paragraph Nos. 49 to 52 of the said judgment being relevant is quoted hereinbelow :-

“**49.** An application under Order 41 Rule 27 CPC *is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh<sup>47</sup> and Natha Singh v. Financial Commr., Taxation.)*

**50.** In *Parsotim Thakur v. Lal Mohar Thakur*<sup>49</sup> it was held: (LW pp. 86-87)

“... The provisions of Section 107, Civil Procedure Code, as elucidated by Order 41 Rule 27, are clearly not intended to allow a litigant who has been unsuccessful in the lower court to patch up the weak parts of his case and fill up omissions in the court of appeal.

... Under Rule 27, clause (1)(b), it is only where the appellate court ‘requires’ it (i.e. finds it needful).... *The*

*legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but 'when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent'.*

... It may well be that the defect may be pointed out by a party, or that a party may move the court to supply the defect, but the *requirement must be the requirement of the court upon its appreciation of evidence as it stands*. Wherever the court adopts this procedure it is bound by Rule 27(2) to record its reasons for so doing and under Rule 29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. ... *the power so conferred upon the court by the Code ought to be very sparingly exercised*, and one requirement at least of any new evidence to be adduced should be that it should have a *direct and important bearing on a main issue in the case.*"

(emphasis added)

**51.** In *Arjan Singh v. Kartar Singh* this Court held: (AIR pp. 195-96, paras 7-8)

"7. ... If the additional evidence was allowed to be adduced contrary to the principles governing the reception of such evidence, *it would be a case of improper exercise of discretion, and the additional evidence so brought on the record will have to be ignored and the case decided as if it was non-existent.*

8. ... The order allowing the appellant to call the additional evidence is dated 17-8-1942. The appeal was heard on 24-4-1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the court required to be filled up for pronouncing its judgment."

(emphasis added)

**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.”

6. From the perusal of the above quoted paragraphs of the judgment, it would be clear that the Supreme Court observed that when an application for taking additional evidence on record at an appellate stage is filed, the same is to be heard at the time of final hearing of the appeal at the stage when after appreciating the evidence on record, the Court reaches the conclusion that the additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. The Supreme Court further observed that 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 a 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. Now coming to the facts of the instant case, it would be seen that the Appellant/the Plaintiff had filed this application under Order XLI Rule 27 (1) (b) of the Code to adduce additional evidence at the appellate stage. The reason assigned in the

application was that the certified copies of Exhibit 4 and 6 were duly adduced during the trial. However, the Trial Court rejected the same and on account thereof the suit was dismissed for which the Appellant/the Plaintiff have filed the application for adducing the registered Deeds of Sale bearing Nos. 2983/2009 and 2984/2009 in original.

7. The learned First Appellate Court contrary to the law laid down by the Supreme Court in the case of Ibrahim Uddin (supra) as quoted hereinabove had rejected the said application even before the hearing of the appeal has commenced and also without taking into consideration as to whether the said evidence is required to be taken on record in order to pronounce the judgment or for any other substantial cause. The reasons assigned in the impugned order is that the Plaintiff/the Appellate is trying to fill up the lacuna which is not relevant for adjudication of an application under Order XLI Rule 27(1) (b) of the Code in as much as observed by the Supreme Court the reason has to be as to whether such additional evidence is required to be taken on record in order to pronounce the judgment or for any other substantial cause. Accordingly, the impugned order dated 27/7/2022 is interfered with and set aside.

8. Before concluding, this Court would also take into account the submission of Mrs. P.Bhattacharya, the learned counsel for the Respondent and more particularly to the judgment rendered in the case of Union of India Vs. K. V. Lakshman(supra) wherein the Supreme Court observed at paragraph 36 and 37 as  
as                      hereinunder:-

“**36.** Order 41 Rule 27 of the Code is a provision which enables the party to file additional evidence at the first and second appellate stage. If the party to appeal is able to satisfy the appellate court that there is justifiable reason for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject-matter of the lis, the court should allow the party to file

such additional evidence. After all, the court has to do substantial justice to the parties. Merely because the court allowed one party to file additional evidence in appeal would not by itself mean that the court has also decided the entire case in its favour and accepted such evidence. Indeed once the additional evidence is allowed to be taken on record, the appellate court is under obligation to give opportunity to the other side to file additional evidence by way of rebuttal.

**37.** Coming to the case, since we have allowed the application made by the appellant under Order 41 Rule 27 of the Code and has permitted the appellant to file additional evidence then as a necessary consequence, the impugned order has to be set aside and the respondents are granted an opportunity to file additional evidence in rebuttal, if they so wish to file.”

9. From a perusal of the above quoted paragraphs of the judgment, it would clearly go to show that the Supreme Court had observed that if a party to the appeal is able to satisfy the Appellate Court and there are justifiable reasons for not filing such evidence at the trial stage and that the additional evidence is relevant and material for deciding the rights of the parties which are the subject matter of the lis, the Court should allow the party to file such additional evidence. After all, the Court has to do substantial justice to the parties. It was further observed that merely because the Court allowed one party to file additional evidence in appeal would not by itself mean that the Court has also decided the entire case in its favour and accepted such evidence. It was observed that once additional evidence is allowed to be taken on record, the Appellate Court is under obligation to give an opportunity to the other side to file additional evidence by way of rebuttal.

10. In that view of the matter, this Court therefore while setting aside the order dated 27/7/2022 directs the Court below to consider the application under Order XLI Rule 27 (1) (b) of the Code filed by the Appellant/the Plaintiff and at the stage of argument, if it is found after appreciating the evidence that the said additional evidence is necessary to do substantial justice, the First Appellate



Court then shall permit such additional evidence to be tendered and upon doing so shall also give opportunity to the other side to place rebuttal evidence if they wish.

10. With the above, the instant petition stands disposed. The interim order dated 14/9/2022 passed by this Court accordingly stands vacated and the parties are directed to appear before the Court of the Civil Judge, Nagaon on 15<sup>th</sup> of November, 2022.

**JUDGE**

**Comparing Assistant**