

# SUPREME COURT OF INDIA

Namdeo

Vs.

Tukaram

C.A.No.5185 of 2008

(R.V. Raveendran J.)

18.08.2008

## ORDER

1. Leave granted. Heard learned counsel for the parties. The appellant and respondent are respectively the plaintiff and defendant in a suit for permanent injunction.

2. The appellant's prayer in the suit was to restrain the respondent from interfering with his possession of agricultural field S.No.131/2 of Ridhora village measuring 4 acres. The suit was dismissed by judgment and decree dated 31.7.2000.

The appellant filed an appeal before the District Judge, Akola. During the pendency of the said first appeal before the District Judge, the appellant filed two applications. One application was for amendment of plaint, under Order 6 Rule 17 of CPC. The second application was under Order 41 Rule 27 of CPC to accept the certified copies of revenue extracts relating to the suit land as additional evidence.

3. The first appellate Court allowed the application for amendment by order dated 20.4.2002. By another order dated 20.4.2002, the first appellate Court permitted production of documents. Ultimately, the first appellate Court dismissed the appeal by order dated 19.6.2006. While doing so, it did not refer to or consider the documents, production of which was permitted. The second appeal filed by the appellant was also dismissed by the High Court. Dealing with the contention of the appellant that the first appellate court ought to have considered and taken into account the additional evidence, the High Court held that it was not sufficient for the appellant to merely file an application under Order 41 Rule 27 CPC; that he ought to have specifically requested the first appellate court to remit the matter to the trial Court for further evidence; and that in the absence of such prayer, the first appellate Court was justified in ignoring the said documents.

4. It is true that the first appellate Court only allowed "production of documents" and did not make any order receiving them as additional evidence. The documents produced by the appellant were all certified copies of crops statement, record of rights, index of lands and revenue proceedings. The appellant was apparently under the impression that his application

for additional evidence had been allowed and the documents had been accepted as evidence. Order 41 Rule 27 CPC contemplates that wherever additional evidence is allowed to be produced by the appellate Court, the court should record reasons for its admission. We find that the first appellate Court did not reject the application under Order 41 Rule 27 CPC, nor did it assign any reasons while recording that only production of the documents was allowed. We are of the view that the procedure adopted was incorrect. The first appellate Court ought to have passed an order in respect of the application under Order 41 Rule 27 CPC, either allowing or rejecting the application. The first appellate Court has considered the application as if it was one under Order 13 Rule 1 CPC and not under Order 41 Rule 27 CPC. The High Court ought to have therefore interfered in the matter by raising an appropriate question of law. It failed to do so. The judgments, therefore, call for interference.

5. We, therefore, allow this appeal and set aside the judgment and decree of the High Court and first appellate Court and remand the matter to the first appellate Court with a direction to consider and dispose of the application under Order 41 Rule 27 CPC in accordance with law and then decide the first appeal.