



2025:DHC:6599



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 24.07.2025
Judgment delivered on: 07.08.2025

+ CM(M) 601/2025 & CM APPL. 18943/2025 & CM APPL.
18944/2025 & CM APPL. 18945/2025
JASWANT SINGH (D) THROUGH LRS AND ORSPetitioners
versus

SANTOSH KUMARI SHARMA & ORS.Respondents

Memo of Appearance

For the Petitioner: Mr. Shekhar Prit Jha and Ms. Tamanna Swami,
Advocates

For the Respondent: Mr. Anuj Aggarwala and Mr. Manav Mitra,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. Petitioners are aggrieved by order dated 29.01.2025 whereby learned First Appellate Court has dismissed their application moved under Order XLI Rule 27 CPC.
2. The suit in question was filed way back in the year 1985.
3. Plaintiff Ms. Santosh Kumar Sharma was, merely, seeking a sum of Rs. 720/- from the concerned tenants which was towards the arrears of rent for the previous three years, the rate of rent being Rs. 20/- per month only.
4. According to her specific case, she had let out the suit premises to defendant No.1-Dhani Ram and Moti Ram (since deceased). Since Mr. Moti



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Ram had died prior to the institution of suit, her legal heirs were impleaded as defendant Nos. 2 to 8 in the suit.

5. During the pendency of the abovesaid suit, an application under Order I Rule 10 CPC had been moved.

6. Such application was allowed and, resultantly, defendant Nos. 9 to 11 were also arrayed as defendants.

7. These defendants are petitioners herein.

8. As already noticed above, the suit was merely seeking recovery of rent but according to such subsequently impleaded defendants, the plaintiff had no right or title or interest in the suit premises and that it belonged to *Joint Hindu Family* of which one Chaudhary Nathu Singh was *Karta*. They also denied that there was any relationship of landlord and tenant between plaintiff and defendant Nos. 1 to 8 and according to them, the plaintiff had not filed any title document and there was no partition of such *Joint Hindu Family*, during the lifetime of the Chaudhary Nathu Singh.

9. Evidently, on the basis of such stand taken by the newly impleaded defendants, the Court, even, framed issues to the effect whether the plaintiff was owner of the suit property or not and whether the defendant Nos. 9 to 11 were the co-owners of the suit property or not.

10. As per judgment dated 26.02.2018, all such issues have been answered in favour of the plaintiff and she has been held to be the owner and landlord of the property in question and the tenancy has also been held to be existing in her favour. Thus, discarding the stand of defendant Nos. 9 to 11, the suit has been decreed against them.

11. Such judgment is under appeal and during the pendency of the abovesaid appeal, the appellants (defendant Nos. 9 to 11/their successors-in-



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interest) moved the abovesaid application under Order XLI Rule 27 CPC praying therein to place on record certified copy of one judgment dated 02.07.2014 passed by this Court in FAO No. 279/2007 titled as *Sh. Narain Singh Etc. versus The State & Ors.*

12. Learned First Appellate Court has denied such request while holding that the same was not falling within the confines of Order XLI Rule 27 CPC.

13. Such order is under challenge.

14. Undoubtedly, the judgment can always be cited as precedent but in the case in hand, the endeavour of the petitioners/appellants is to treat such judgment as a '*piece of evidence*'.

15. Let us first see the relevancy of the abovesaid judgment in context of the present case.

16. As already noted above, the case of the plaintiff was to the effect that she was the owner of the suit premises and was merely seeking rent from her tenants.

17. Plaintiff also examined her husband Mr. Jagdish Chand Sharma as PW-4 and according to the testimony of her husband, the owner of the suit premises was in fact, the same Chaudhary Nathu Singh who expired on 02.08.1980.

18. According to plaintiff and her husband, Chaudhary Nathu Singh sold the suit premises to plaintiff on 19.01.1980 and executed '*Agreement to Sell*', '*Will*', '*GPA*' and '*Receipt*' towards such sale-transaction.

19. Thus, the plaintiff is also tracing her title through Chaudhary Nathu Singh.

20. According to appellants (defendant Nos. 9 to 11), the property



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belonged to *Joint Hindu Family* of which Chaudhary Nathu Singh was *Karta* and they claimed themselves to be his legal heirs.

21. According to them, the husband of the plaintiff was Munim (accountant) of Chaudhary Nathu Singh and the documents, on which the plaintiff was relying upon in order to assert her ownership, had been obtained by way of fraud. Though the signatures of Chaudhary Nathu Singh on such documents were not disputed but according to them, these were obtained by way of fraud and, therefore, these had no legal validity.

22. The petitioners contend that the abovesaid judgment is very significant and has direct bearing with respect to the controversy in hand.

23. The abovesaid judgment dated 02.07.2014 was rendered by this Court while dealing with an appeal, challenging order passed by the Court of learned Additional District Judge, Delhi whereby "*Letters of Administration*" had been granted in favour of Mr. Jagdish Chand (husband of plaintiff herein) in respect of one earlier *Will* dated 22.10.1993, purported to have been made by Chaudhary Nathu Singh. This Court while allowing the abovesaid appeal, had dismissed the Probate Petition and held that said *Will* dated 22.10.1993 did not stand proved.

24. Undoubtedly, *Will* in the aforesaid case was executed by the same Chaudhary Nathu Singh. It pertained to one property situated at Sukhdev Nagar, Kotla Mubarakpur, New Delhi and as per the recital appearing in the *Will*, on account of love and affection shown by Mr. Jagdish Chandra Sharma, part of said property was bequeathed in his favour. The objections in that case had been filed by sons and daughters of the Testator and, according to them, relationship between Mr. Jagdish Chandra Sharma and testator were strained and it was not expected that he would execute a *Will*



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in his favour. According to them, *Will* was either fabricated or manipulated. This Court went on to hold that *Will* had not been proved and, therefore, no probate or *Letters of Administration* could be granted under the law. It also recorded about that the testimony of the attesting witness who did not even recollect the execution of *Will* or that whether the testator had put his signatures on the *Will* in his presence.

25. However, merely because with respect to one another *Will* left behind by the same testator, probate was not granted, would not *ipso facto*, mean anything substantial in the context of the present case. The case in hand does not relate to grant of probate and *Letters of Administration* either.

26. Moreover, the property in the present case is different though situated in the same area.

27. The beneficiaries under the two *Wills* are also different though related *inter se*.

28. Importantly, there is a huge time-gap between the two *Wills*.

29. The *Will*, which was subject matter of the Probate Petition, was executed on 22.10.1993 whereas the *Will* in question is of 19.01.1980.

30. In such a situation, the request to refer to the judgment of this Court in the aforesaid FAO, as additional evidence, has no real force and would not lead to any conclusive inference, either way. Of course, judgment given in probate matter is a *judgment in rem* but that does not mean that such judgment can be permitted to be used as additional evidence, at such a belated stage.

31. The judgment in FAO is of the year 2014 and the suit in question was adjudicated by the learned Trial Court in the year 2018. It is not expected that the legal representatives of Chaudhary Nathu Singh would not be aware



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about the aforesaid probate matter in which, rather, objections had been filed by their predecessors-in-interest and, therefore, their such belated endeavour, seeking permission to rely upon the aforesaid judgment as additional evidence under Order XLI Rule 27 CPC, does not seem to be sustainable.

32. As per bare provision, additional evidence under Order 41 Rule 27 CPC can be permitted to be adduced on existence of one of the following: -

- 1) *When the trial Court has refused to admit the evidence which ought to have been admitted.*
- 2) *That the evidence sought to be adduced by the party was not available to it, despite exercise of due diligence.*
- 3) *Additional evidence is necessary in order to enable the Appellate Court to pronounce the judgment or any other substantial cause of similar nature.*

33. Here, the permission is being sought citing that the above judgment was not in the knowledge of the appellants and, therefore, despite due diligence, best efforts and *bonafide* intention, such additional document could not be filed at trial stage. Also, that it would enable the court to reach just decision as said judgment is *judgment in rem* and, therefore, it attains binding character and becomes conclusive and un rebuttable. The petitioners, to buttress the same, rely upon on *Vidya Drolia v. Durga Trading Corpn.:* (2021) 2 SCC 1. It is argued that such judgment is conclusive against all persons whether parties, privies or strangers to the matter and binds all of them claiming an interest in the property, inconsistent with the judgment, even though it might have been pronounced in their absence.

34. Though there cannot be any debate with the settled legal proposition, it becomes very much evident that the facts of the two cases are totally



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dissimilar and since the subject property of probate petition, which was eventually dismissed by this Court on 02.07.2014 is different, it cannot be *ipso-facto* contended that said judgment would be robotically applicable to the case in hand, rendering the title documents in favour of plaintiff, null and void. As noted already, the beneficiary in both the cases are different and the date of execution of documents is also different and, therefore, petitioners cannot, as a matter of right, claim benefit of Section 41 of Indian Evidence Act, 1872 (Corresponding provision being, Section 35 of Bharatiya Sakshya Adhinyam, 2023).

35. The character of the husband of plaintiff, merely on the strength of abovesaid judgment dated 02.07.2014 cannot be castigated and he cannot be, automatically, labelled as a person of doubtful integrity. Merely because in one case, the execution of documents was not believed would not mean that in another case pertaining to another set of documents, the eventual outcome would be the same, particularly when there is huge time-gap between the execution of two sets of documents.

36. The other intricate aspects of the case need not be pondered upon, lest it may prejudice the mind of Learned First Appellate Court.

37. Fact remains that, at best, petitioner can rely upon the abovesaid judgment “*as a precedent*” but cannot use the same as an additional piece of evidence. The abovesaid judgment was pronounced when the suit in question was pending trial and if petitioners were of the view that it had some relevancy, they should have demonstrated due diligence by placing the same on record, at the earliest available opportunity.

38. Invocation of Order XLI Rule 27 CPC, thus, does not seem to be appropriate from any angle. Reference be made to *Union of India v. Ibrahim*



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Uddin and Another: 2012 SCC OnLine SC 528 where Hon'ble Supreme Court has observed that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the Appellate Court. It also observed as under:-

“36. 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. 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. (Vide *K. Venkataramiah v. A. Seetharama Reddy* [AIR 1963 SC 1526], *Municipal Corpn. of Greater Bombay v. Lala Pancham* [AIR 1965 SC 1008], *Soonda Ram v. Rameshwarlal* [(1975) 3 SCC 698 : AIR 1975 SC 479] and *Syed Abdul Khader v. Rami Reddy* [(1979) 2 SCC 601 : AIR 1979 SC 553])”



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39. Thus, the discretion is to be used sparingly, *albeit*, judiciously.

40. Moreover, the exercise of jurisdiction under Article 227 of Constitution of India is a constricted one and such power has to be invoked sparingly when the finding is absolutely perverse. While exercising any such power, the High Court is not required to substitute its own decision on facts and conclusion and, therefore, there does not seem to be any compelling reason to interfere with the impugned order.

41. The discretionary exercise of power of learned First Appellate Court does not seem to be an arbitrary one and, resultantly, the present petition is hereby dismissed.

42. However, petitioners would be at liberty to cite the aforesaid judgment as a case law and it would be entirely upto the learned Trial Court to consider the same without being influenced by any of the observations appearing in the present order.

(MANOJ JAIN)
JUDGE

AUGUST 7, 2025/sw