Union Of India vs Ibrahim Uddin & Anr on 17 July, 2012

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Bench: Dipak Misra, B.S. Chauhan

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1374 of 2008

Union of India
....Appellant

Versus

Ibrahim Uddin & Anr.
....Respondents

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. This appeal has been preferred against the impugned judgment and decree dated 19.4.2007 passed by the High Court of Judicature at Allahabad in Second Appeal No.289 of 2000 by which it has upheld the judgment and decree of the first appellate Court dated 15.10.1999 passed in Civil Appeal No.81 of 1998 by which the first appellate Court had reversed the judgment and decree of the Civil Court dated 20.1.1998 passed in Original Suit No.442 of 1995 wherein the plaintiff/respondent no.1 had sought declaration of title of the ownership in respect of the suit property.

2. Facts and circumstances giving rise to this appeal are:

A. Plaintiff/respondent no.1-Ibrahim Uddin filed Original Suit No.442 of 1995 in the Court of Civil Judge, Agra on 25.7.1995 seeking a decree for declaration that he was the owner of the suit property (Agriculture land measuring 25 bighas), making averments that the suit land originally had been with the Maratha Government (Scindia-Gwalior). The ancestors of the plaintiff having close association with the Maratha Government, were made a grant in respect of the suit land in the year 1800. Subsequently, the land was partitioned between the ancestors of the plaintiff in the year 1819. The plaintiff/respondent no.1 being the only heir (descendant) of Smt. Hasin Begum and Zafaruddin became the absolute owner of the land after the death of his mother Smt. Hasin Begum. The said land was never sold, alienated, transferred or gifted to any person either by the plaintiff or his ancestors at any point of time. The suit land was given on rent to the State authorities in Agra by executing a rent note for a sum of Rs.22/- per month. The Union of India claimed title over the suit land illegally and in an unauthorised manner on 22.2.1993 and afterwards, thus the cause

of action arose to approach the court.

B. The defendant no.1/appellant filed the written statement denying the averments and ownership of the plaintiff/respondent no.1 and averred that the land belonged to the Ministry of Defence, i.e., Union of India, a part of which has been leased out to several persons for agriculture work and their lease has been renewed from time to time. As they became unauthorised occupants, proceedings had been initiated in accordance with law and eviction order had been passed against the occupants/tenants.

C. In view of the pleadings, 8 issues were framed by the Trial Court and after appreciating the evidence on record, the trial Court came to the conclusion that Pedigree produced by the plaintiff alongwith the plaint was not successfully proved; the plaintiff could not prove any kind of grant by the Maratha Government to his ancestors/great-grandfathers in the year 1800. Plaintiff failed to prove the partition between his ancestors in 1819. The lease deed alleged to have been executed in favour of the Military Estate Officer under the Union of India, appellant/defendant No.1, was not successfully proved. In view of the above, the suit was dismissed vide judgment and decree dated 20.1.1998.

D. Aggrieved, the plaintiff/respondent no.1 preferred the first appeal before the District Judge, Agra. During the pendency of the said appeal, he preferred an application under Order XLI Rule 27 of the Code of Civil Procedure 1908 (hereinafter called "CPC") on 6.4.1998 for adducing additional evidence, i.e., Will executed by his maternal grandfather dated 1.3.1929 in his favour bequeathing the suit property. The said application was allowed by the first appellate Court vide order dated 28.4.1999. The First Appeal itself stood allowed by the first appellate Court vide judgment and decree dated 15.10.1999 wherein the first appellate Court came to the conclusion that Maratha Government had made the gift of land in favour of plaintiff's fore- fathers which was subsequently partitioned. The registered partition deed stood duly proved and it was the proof of the title of the plaintiff/respondent no.1. The plaintiff/respondent no.1 made an application for inspection of the record before the officers of the appellant/defendant no.1 but perusal of the record was not permitted. The appellant/defendant no.1 did not produce any document to show its title and failed to produce the original record, thus, adverse inference was drawn against it in view of the provisions of Section 114 clause(g) of the Indian Evidence Act, 1872 (hereinafter called the Evidence Act). The Will, taken on record as an additional evidence at appellate stage stood proved and thus, contents thereof automatically stood proved.

E. Aggrieved, the appellant preferred Second Appeal before the High Court which has been dismissed vide impugned judgment and decree. Hence, this appeal.

3. Shri R.P. Bhatt, learned Senior counsel duly assisted by Ms. Madhurima Tatia, Advocate has submitted that there was no documentary evidence or trustworthy oral evidence that the suit property had been given to the fore-fathers of the plaintiff/respondent no.1 by the Maratha Government in the year 1800. Same remained the factual aspect in respect of alleged partition among his fore-fathers in the year 1819. The first appellate Court had no occasion to decide the application under Order XLI Rule 27 CPC prior to the hearing of the appeal itself. More so, as there has been no reference to the Will in the plaint or First Appeal, thus, it could not be taken on record for want of pleadings in this respect. Further, taking the Will on record did not mean that either the Will or its contents stood proved. None had proved the said Will and thus, could not be relied upon. If the Will is ignored, there is no evidence on record to prove the case of the plaintiff/respondent no.1.

The High Court had framed 4 substantial questions of law at the time of admission of the appeal and 2 additional substantial questions at a later stage but did not answer either of them nor recorded any finding that none of them was, in fact, a substantial question of law, rather the appeal has been decided placing reliance on the Will, which was liable to be ignored altogether and making reference to the record of the Cantonment Board. In case, the Union of India did not produce the revenue record before the trial Court, the first appellate Court has wrongly drawn adverse inference under Section 114(g) of the Evidence Act. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Asok Ganguly and Shri C.L. Pandey, learned Senior counsel with Shri Vibhor Garg, Advocate vehemently opposed the appeal contending that concurrent findings recorded by the first and second appellate Court are not liable to be interfered with in discretionary jurisdiction under Article 136 of the Constitution of India, 1950. The registered partition deed of 1819 is the proof of title of the plaintiff/respondent no. 1. In view of the fact that the Second Appeal could be decided on limited issues, the High Court was not bound to answer the substantial questions of law, framed by it. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

Presumption under Section 114(g) of the Evidence Act :

6. Generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under Section 114(g) of the Evidence Act notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence. (Vide: Murugesam Pillai v. Gnana Sambandha Pandara Sannadhi, AIR 1917 PC 6; Hiralal & Ors. v. Badkulal & Ors., AIR 1953 SC 225; A. Raghavamma & Anr. v. A. Chenchamma & Anr., AIR 1964 SC 136; The Union of India v. Mahadeolal Prabhu Dayal, AIR 1965 SC 1755; Gopal Krishnaji Ketkar v. Mohamed Haji Latif & Ors., AIR 1968 SC 1413; M/s. Bharat Heavy Electrical Ltd. v. State of U.P. & Ors., AIR 2003 SC 3024; Musauddin Ahmed v. State of Assam, AIR 2010 SC 3813; and Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr., (2011) 9 SCC 126).

7. However, in Mt. Bilas Kunwar v. Desraj Ranjit Singh, AIR 1915 PC 96, a view has been expressed that it is open to a litigant to refrain from producing any document that he considers irrelevant; if the other litigant is dissatisfied, it is for him to apply for interrogatories/inspections and production of documents. If he fails to do so, neither he nor the Court at his suggestion, is entitled to draw any inference as to the contents of any such documents.

8. In Kamma Otukunta Ram Naidu v. Chereddy Pedda Subba Reddy & Ors., AIR 2003 SC 3342, this Court held that all the pros and cons must be examined before drawing an adverse inference against a party. In that case the issue had been, as to whether two persons had been travelling together in the vehicle and presumption had been drawn only on the basis that the bus tickets of both the persons were not produced. This Court held that presumption could not have been drawn if other larger evidence was shown to the contrary. (See also: Mohinder Kaur v. Kusam Anand, (2000) 4 SCC 214; and Takhaji Hiraji v. Thakore Kubersing Chamansing & Ors., AIR 2001 SC 2328).

9. In Municipal Corporation, Faridabad v. Siri Niwas, AIR 2004 SC 4681, this Court has taken the view that the law laid down by this Court in Gopal Krishnaji Ketkar (supra) did not lay down any law, that in all situations the presumption in terms of clause (g) of Section 114 of the Evidence Act must be drawn.

10. In Mahant Shri Srinivas Ramanuj Das v. Surjanarayan Das & Anr., AIR 1967 SC 256, this Court held that mere withholding of documentary evidence by a party is not enough to draw adverse inference against him. The other party must ask the party in possession of such evidence to produce the same, and in case the party in possession does not produce it, adverse inference may be drawn:

> "It is true that the defendant-respondent also did not call upon the plaintiff-appellant to produce the documents whose existence was admitted by one or the other witness of the plaintiff and that therefore, strictly speaking, no inference adverse to the plaintiff can be drawn from his non-producing the list of documents. The Court may not be in a position to conclude from such omission that those documents would have directly established the case for the respondent. But it can take into consideration in weighing the evidence or any direct inferences from established facts that the documents might have favoured the respondent case."

11. In Ramrati Kuer v. Dwarika Prasad Singh & Ors., AIR 1967 SC 1134, this Court held:

> "It is true that Dwarika Prasad Singh said that his father used to keep accounts. But no attempt was made on behalf of the appellant to ask the court to order Dwarika Prasad Singh to produce the accounts. An adverse inference could only have been drawn against the plaintiffs-respondents if the appellant had asked the court to order them to produce accounts and they had failed to produce them after admitting that Basekhi Singh used to keep accounts. But no such prayer was made to the court, and in the circumstances no adverse inference could be drawn from the non-production of accounts." (See also: Ravi Yashwant Bhoir v. District Collector, Raigad & Ors., AIR 2012 SC 1339).

12. In Smt. Indira Kaur & Ors. v. Shri Sheo Lal Kapoor, AIR 1988 SC 1074, the lower courts drew an adverse inference against the appellant- plaintiff on the ground that the plaintiff was not ready and willing to perform his part of the contract. The question arose as to whether the party had the means to pay. The court further held that before the adverse inference is drawn against a particular party, the conduct and diligence of the other party is also to be examined. Where a person deposed that as he had deposited the money in the Bank and the other party did not even ask as on what date and in which Bank the amount had been deposited and did not remain diligent enough, the question of drawing adverse inference against such a person for not producing the Pass Book etc. cannot be drawn.

13. In Mahendra L. Jain & Ors. v. Indore Development Authority & Ors., (2005) 1 SCC 639, this Court held that mere non-production of documents would not result in adverse inference. If a document was called for in the absence of any pleadings, the same was not relevant. An adverse inference need not necessarily be drawn only because it would be lawful to do so.

14. In Manager, R.B.I., Bangalore v. S. Mani & Ors., AIR 2005 SC 2179, this Court dealt with the issue wherein the Industrial Tribunal directed the employer to produce the attendance register in respect of the first party workmen. The explanation of the appellant was that the attendance registers being very old, could not be produced. The Tribunal, however, in its award noticed the same and drew an adverse inference against the appellants for non-production of the attendance register alone. This Court reversed the finding observing:

> "As noticed hereinbefore, in this case also the respondents did not adduce any evidence whatsoever. Thus, in the facts and circumstances of the case, the Tribunal erred in drawing an adverse inference.
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> The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed to prove their plea of abandonment of service" (See also: A. Jayachandra v. Aneel Kaur, AIR 2005 SC 534; R.M. Yellatti v. Assistant Executive Engineer AIR 2006 SC 355; and Pratap Singh & Anr. v. State of M.P., AIR 2006 SC 514).

15. Order XI CPC contains certain provisions with the object to save expense by obtaining information as to material facts and to obtain admission of any fact which he has to prove on any issue. Therefore, a party has a right to submit interrogatories relating to the same matter in issue. The expression "matter" means a question or issue in dispute in the action and not the thing about which such dispute arises. The object of introducing such provision is to secure all material documents and to put an end to protracted enquiry with respect to document/material in possession of the other party. In such a fact-situation, no adverse inference can be drawn against a party for non-production of a document unless notice is served and procedure is followed. Under Rule 14 of Order XI, the court is competent to direct any party to produce the document asked by the other party which is in his possession or power and relating to any material in question in such suit. Rule 15 Order XI provides for inspection of documents referred to in pleadings or affidavits. Rule 18

thereof, empowers the court to issue order for inspection. Rule 21 thereof provides for very stringent consequences for non-compliance with the order of discovery, as in view of the said provisions in case the party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if he is a plaintiff, be liable to have his suit dismissed for want of prosecution and if he is a defendant, to have his defence, if any, struck out and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect. Thus, in view of the above, the suit may be dismissed for non-compliance of the aforesaid orders by the plaintiff and the plaintiff shall also be precluded from bringing a fresh suit on the same cause of action. Similarly, defence of the defendant may be struck off for non-compliance of such orders.

16. Thus, in view of the above, the law on the issue can be summarised to the effect that, issue of drawing adverse inference is required to be decided by the court taking into consideration the pleadings of the parties and by deciding whether any document/evidence, withheld, has any relevance at all or omission of its production would directly establish the case of the other side. The court cannot loose sight of the fact that burden of proof is on the party which makes a factual averment. The court has to consider further as to whether the other side could file interrogatories or apply for inspection and production of the documents etc. as is required under Order XI CPC. Conduct and diligence of the other party is also of paramount importance. Presumption or adverse inference for non-production of evidence is always optional and a relevant factor to be considered in the background of facts involved in the case. Existence of some other circumstances may justify non-production of such documents on some reasonable grounds. In case one party has asked the court to direct the other side to produce the document and other side failed to comply with the court's order, the court may be justified in drawing the adverse inference. All the pros and cons must be examined before the adverse inference is drawn. Such presumption is permissible, if other larger evidence is shown to the contrary.

17. In the instant case, admittedly, the plaintiff/respondent no.1 during the pendency of his suit had made an application before the authorities under the control of the appellant/defendant no.1 to make the inspection. However, he was not permitted to have any inspection. The plaintiff/respondent no.1 did not submit any interrogatory statement or an application for making inspection or for production of the document as provided under Order XI CPC. In such a fact-situation, in view of the law referred to hereinabove, it is not permissible for the first appellate Court or the High Court to draw any adverse inference against the appellant/defendant no.1.

Admissions:

18. The first appellate court while dealing with the issue of admission and proof of documents held as under:

> ?"The plaintiff has produced will dated l.3.1929 of his maternal grandfather, Syed Nazim Ali which the court had taken on record on 28.4.99 and the defendant No.1 was given one week time for producing the rebuttal, but the defendant No.1 did not produce any paper against the Will. Therefore, it has been given in section 58 of the

> Evidence that if the defendant does not produce any paper in rebuttal, then it means that he admitted the paper produced by the plaintiff. There is no need of proving the same." (Emphasis added)

19. The question does arise as to whether not filing a document in rebuttal of a document amounts to an admission and whether the provisions of Section 58 of the Evidence Act are attracted.

Order XII CPC deals with admission of the case, admission of the documents and judgment on admissions. Rule 1 thereof provides that a party to a suit may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any party of the case of any other party. Rule 2 deals with notice to admit documents – it provides that each party may call upon the other party to admit within 7 days from the date of service of the notice of any document saving all such exceptions. Rule 2A provides that a document could be deemed to have been admitted if not denied after service of notice to admit documents.

20. Admission is the best piece of substantive evidence that an opposite party can rely upon, though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Admission may in certain circumstances, operate as an estoppel. The question which is needed to be considered is what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. (Vide: Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi & Ors., AIR 1960 SC 100; Basant Singh v. Janki Singh & Ors., AIR 1967 SC 341; Sita Ram Bhau Patil v. Ramchandra Nago Patil, AIR 1977 SC 1712; Sushil Kumar v. Rakesh Kumar, AIR 2004 SC 230; United Indian Insurance Co Ltd. v. Samir Chandra Choudhary., (2005) 5 SCC 784; Charanjit lal Mehra & Ors v. Kamal Saroj Mahajan & Anr., AIR 2005 SC 2765; and Udham Singh v. Ram Singh & Anr., (2007) 15 SCC 529.)

21. In Nagubai Ammal & Ors. v. B.Shama Rao & Ors., AIR 1956 SC 593, this Court held that admission made by a party is admissible and best evidence, unless it is proved that it had been made under a mistaken belief. While deciding the said case reliance has been placed upon the judgment in Slatterie v. Pooley, (1840) 6 M & W 664, wherein it had been observed "What a party himself admits to be true, may reasonably be presumed to be so."

22. In L.I.C of India & Anr v. Ram Pal Singh Bisen, (2010) 4 SCC 491, this Court held that "failure to prove the defence does not amount to an admission, nor does it reverse or discharge the burden of proof of the plaintiff."

23. In view of the above, the law on the admissions can be summarised to the effect that admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel. Law requires that an opportunity be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the

question of admission. Failure of a party to prove its defence does not amount to admission, nor it can reverse or discharge the burden of proof of the plaintiff.

24. In the instant case, the Court held that not filing any document in rebuttal of the Will dated 1.3.1929 amounts to admission of the said Will as well as it contents. Without following the procedure as required under Order XII CPC or admission having not been made during the course of hearing before the Court, the question of application of Section 58 of the Evidence Act could not arise. Section 58 provides that a fact may not need to be proved in any proceeding which the parties thereto agreed to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands or which they admitted by their pleading, even in that case court may, in its discretion, even if such a admission has been made by the party, require the fact admitted to be proved otherwise than by such admission. In fact, admission by a party may be oral or in writing. `Admissions' are governed under Sections 17 to 31 of the Evidence Act and such admission can be tendered and accepted as substantive evidence. While admission for purposes of trial may dispense with proof of a particular fact. Section 58 deals with admissions during trial i.e. at or before the hearing, which are known as judicial admissions or stipulations dispense it with proof. Admissions are not conclusive proof but may operate as estoppel against its maker. Documents are necessarily either proved by witness or marked on admission.

In view of above, it is evident that the first appellate court has misdirected itself so far as the issue of admission is concerned. The finding recorded by it that appellant/defendant No.1 failed to produce any document in rebuttal of the Will is not only wrong but preposterous.

Order XLI Rule 27 C.P.C.

25. 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 XLI 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, provision does not apply, when on the basis of 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 & Ors., AIR 1963 SC 1526; The Municipal Corporation of Greater Bombay v. Lala Pancham & Ors., AIR 1965 SC 1008; Soonda Ram & Anr. v. Rameshwaralal & Anr., AIR 1975 SC 479; and Syed Abdul Khader v. Rami Reddy & Ors., AIR 1979 SC 553).

26. The Appellate Court should not, ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce judgment. (Vide: Haji Mohammed Ishaq Wd. S. K. Mohammed & Ors. v. Mohamed Iqbal and Mohamed Ali and Co., AIR 1978 SC 798).

27. Under Order XLI , 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 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. [Vide: Lala Pancham & Ors. (supra)].

28. It is not the business of the Appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory reasons for the non- production of the evidence in the trial court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower court is not entitled to the indulgence of being allowed to give further evidence under this rule. So a party who had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide: State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; and S. Rajagopal v. C.M. Armugam & Ors., AIR 1969 SC 101).

29. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a "substantial cause"

> within the meaning of this rule. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

30. The words "for any other substantial cause" must be read with the word "requires" in the beginning of 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.

31. 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.

32. The reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate Court. A mere reference to the peculiar circumstances of the case, or mere statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough comp1iance with the requirement as to

recording of reasons.

33. It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice – delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide: State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1794; State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi, AIR 2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285; and Sant Lal Gupta & Ors. v. Modern Cooperative Group Housing Society Limited & Ors., (2010) 13 SCC 336).

34. In The Land Acquisition Officer, City Improvement Trust Board, Bangalore v. H. Narayanaiah etc. etc., AIR 1976 SC 2403, while dealing with the issue, a three judge Bench of this Court held as under:

> "We are of the opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it an opportunity should have been given to the appellant to rebut any inference arising from its insistence by leading other evidence." (Emphasis added) A similar view has been reiterated by this Court in Basayya I. Mathad v. Rudrayya S. Mathad and Ors., AIR 2008 SC 1108.

35. A Constitution Bench of this Court in K. Venkataramiah (Supra), while dealing with the same issue held:

> "It is very much to be desired that the courts of appeal should not overlook the provisions of cl. (2) of the Rule and should record their reasons for admitting additional evidence..... The omission to record reason must, therefore, be treated as a serious defect. Even so, we are unable to persuade ourselves that this provision is mandatory." (Emphasis added) In the said case, the court after examining the record of the case came to the conclusion that the appeal was heard for a long time and the application for taking additional evidence on record was filed during the final hearing of the appeal. In such a fact-situation, the order allowing such application did not vitiate for want of reasons.

36. Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.

37. To sum up on the issue, it may be held that 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 condition 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 an 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. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage.

Stage of Consideration :

38. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find 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 & Ors., AIR 1951 SC 193; and Natha Singh & Ors. v. The Financial Commissioner, Taxation, Punjab & Ors., AIR 1976 SC 1053).

39. In Parsotim Thakur & Ors. v. Lal Mohar Thakur & Ors., AIR 1931 PC 143, it was held:

> ?“The provisions of S.107 as elucidated by O.41, R.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 R.27, Cl.(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 apply 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 R. 27(2) to record its reasons for so doing, and under R.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) (See also: Indirajit Pratab Sahi v. Amar Singh, AIR 1928 P.C. 128)

40. In Arjan Singh v. Kartar Singh & Ors. (supra), this Court held:

> ".....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..... 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 the judgment" (Emphasis added)

41. Thus, from the above, it is crystal clear that 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 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, 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.

In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.

42. The High Court while admitting the appeal had framed the following substantial questions of law:

> 1. Whether the judgment and decree passed by the lower appellate court is vitiated in law inasmuch as the land in dispute which was recorded in Column B-4 under Rule 6 of the Cantonment Land Administration Rule 1937 was wrongly and illegally discarded on the ground of secondary evidence in the presence of the original register maintained by the Military Estate Officer.

> 2. Whether the certified copy of the relevant registers maintained under the Cantonment Act are admissible in evidence and appellate court erred in law in discarding the same illegally against the relevant provisions of the Evidence Act and decreed the suit of the plaintiff on the false pretext that there is no document was filed on behalf of the defendant?
>
> 3. Whether the appellate court did not consider this aspect at all that the suit for declaration without possession is not maintainable is barred by the provision of Specific Relief Act.
>
> 4. Whether the lower appellate court has committed illegality while accepting the Will dated 1.3.1992 filed on 28.4.1999 without its proof by plaintiff?

The High Court admittedly did not answer any of them, though had the question Nos. 2, 3 and 4 been decided, the result would have been otherwise.

Section 34 of the Specific Relief Act, 1963 :

43. The Section provides that courts have discretion as to declaration of status or right, however, it carves out an exception that a court shall not make any such declaration of status or right where the complainant, being able to seek further relief than a mere declaration of title, omits to do so.

44. In Ram Saran & Anr. v. Smt. Ganga Devi, AIR 1972 SC 2685, this Court had categorically held that the suit seeking for declaration of title of ownership but where possession is not sought, is hit by the proviso of Section 34 of Specific Relief Act, 1963 (hereinafter called 'Specific Relief Act') and, thus, not maintainable.

45. In Vinay Krishna v. Keshav Chandra & Anr., AIR 1993 SC 957, this Court dealt with a similar issue where the plaintiff was not in exclusive possession of property and had filed a suit seeking declaration of title of ownership. Similar view has been reiterated observing that the suit was not maintainable, if barred by the proviso to Section 34 of the Specific Relief Act. (See also: Gian Kaur v. Raghubir Singh, (2011) 4 SCC 567).

46. In view of above, the law becomes crystal clear that it is not permissible to claim the relief of declaration without seeking consequential relief. In the instant case, suit for declaration of title of ownership had been filed though, the plaintiff/respondent no. 1 was admittedly not in possession of the suit property. Thus, the suit was barred by the provision of Section 34 of the Specific Relief Act and, therefore, ought to have been dismissed solely on this ground. The High Court though framed a substantial question on this point but for unknown reasons did not consider it proper to decide the same. Section 100 CPC :

> 47. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a Second Appeal does not lie on question of facts or of law.

48. In State Bank of India & Ors. v. S.N. Goyal, AIR 2008 SC 2594, this Court explained the terms "substantial question of law" and observed as under :

"The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. ..... any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (Emphasis added) Similarly, in Sir Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314, this Court for the purpose of determining the issue held:-

"The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties....." (Emphasis added)

49. In Vijay Kumar Talwar v. Commissioner of Income Tax, New Delhi, (2011) 1 SCC 673, this Court held that, a point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. It will, therefore, depend on the facts and circumstance of each case, whether a question of law is a substantial one or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

(See also: Rajeshwari v. Puran Indoria, (2005) 7 SCC 60).

50. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine-qua-non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law." Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the Realm of Jurisprudence, has been explained as under:-

> "A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong." (Vide: Salmond, on Jurisprudence, 12th Edn. page 69, cited in Gadakh Yashwantrao Kankarrao v. E.V. alias Balasaheb Vikhe Patil & ors., AIR 1994 SC 678).

51. In Smt. Bibhabati Devi v. Ramendra Narayan Roy & Ors., AIR 1947 PC 19, the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under:-

> "..... that miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happen not in the proper sense of the word 'judicial procedure' at all. That the violation of some principles of law or procedure must be such erroneous proposition of law that if that proposition to be corrected, the finding cannot stand, or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the Courts could arrive at their finding, is such a question of law.
>
> 'That the question of admissibility of evidence is a proposition of law but it must be such as to affect materially the finding. The question of the value of evidence is not sufficient reason for departure from the practice....."

52. In Suwalal Chhogalal v. Commissioner of Income Tax, (1949) 17 ITR 269, this Court held as under:-

> "A fact is a fact irrespective of evidence, by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient evidence."

53. In Oriental Investment Company Ltd. v. Commissioner of Income Tax, Bombay, AIR 1957 SC 852, this Court considered a large number of its earlier judgments, including Sree Meenakshi Mills Ltd., Madurai v. Commissioner of Income Tax, Madras, AIR 1957 SC 49, and held that where the question of decision is whether certain profit is made and shown in the name of certain intermediaries, were, in fact, profit actually earned by the assessee or the intermediaries, is a mixed question of fact and law. The Court further held that inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a "mixed question of law and fact" and that a finding of fact without evidence to support it or if based on relevant or irrelevant matters, is not unassailable.

54. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. (Vide: Jagdish Singh v. Nathu Singh, AIR 1992 SC 1604; Smt. Prativa Devi (Smt.) v. T.V. Krishnan, (1996) 5 SCC 353; Satya Gupta (Smt.) @ Madhu Gupta v. Brijesh Kumar, (1998) 6 SCC 423; Ragavendra Kumar v. Firm Prem Machinary & Co., AIR 2000 SC 534; Molar Mal (dead) through Lrs. v. M/s. Kay Iron Works Pvt. Ltd., AIR 2000 SC 1261; Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors., AIR 2010 SC 2685; and Dinesh Kumar v. Yusuf Ali, (2010) 12 SCC

740).

55. In Jai Singh v. Shakuntala, AIR 2002 SC 1428, this Court held that it is permissible to interfere even on question of fact but it may be only in "very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible it is a rarity rather than a regularity and thus in fine it can thus be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection." Similar view has been taken in the case of Kashmir Singh v. Harnam Singh & Anr., AIR 2008 SC 1749.

56. Declaration of relief is always discretionary. If the discretion is not exercised by the lower court "in the spirit of the statute or fairly or honestly or according to the rules of reason and justice", the order passed by the lower court can be reversed by the superior court. (See: Mysore State Road Transport Corporation v. Mirja Khasim Ali Beg & Anr., AIR 1977 SC 747).

57. There may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. It may be necessary to do so for the reason that after all the purpose of the establishment of courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal.

58. In the instant case, none of the substantial questions framed by the Court had been answered. Much reliance has been placed on the Will which was liable just to be ignored. Even otherwise, the Will in the instant case cannot be relied upon for want of pleadings.

59. The pleading taken in the plaint dated 25.7.1995 clearly revealed that the land in dispute belonged to Hafiz Ahmad Bux and Hafiz Kareem Bux who were the ancestors of the plaintiff and they were the owners of the same in the year 1800. The property was partitioned between ancestors of the plaintiff in the year 1819. There had been succession of the property by various documents of Hafiz Kareem Bux and Hafiz Ahmad Bux. The plaintiff claims to be heir and successor of one Smt.

Hasin Begum wife of Zafaruddin and daughter of Sri Hazim Ali. He had inherited the suit property being a lone heir of Shri Hafiz Ahmed Bux after the death of his mother Smt. Hasin Begum.

In case, the plaint does not make any reference that the property had been given to the plaintiff/respondent no.1 by way of Will, and pleadings had not been amended at the stage of first appeal, the question does arise as to whether, the Will could be taken into consideration, while deciding the case.

The trial court had considered as many as seven issues and does not make any reference that the property had been gifted to the ancestors of the plaintiff by the Maratha rulers. Further finding has been recorded that in respect of documents, the plaintiff/respondent no. 1 had given paper to defendant no. 1 for inspection of the record but he did not make any inspection. However, a passing reference had been made by the trial court that no record had been produced by the plaintiff to show that the Maratha Government had given the land to the forefathers of the plaintiff.

So far as the First Appellate Court is concerned, it placed a very heavy reliance on the Will and further recorded a finding that in spite of the fact that the plaintiff filed an application for inspection before the appellant/defendant no.1, he was not permitted to have the inspection. Nor the said revenue record was presented by the present appellant and, therefore, an adverse inference was drawn against it. So far as the Will is concerned, it is evident that it was taken on the record as an additional evidence without any pleading anywhere. There is nothing on record that the plaintiff/defendant no. 1 made any attempt to make an amendment in the plaint even at the appellate stage by moving an application under Order VI Rule 17 CPC.

60. Relevant part of the application under Order XLI Rule 27 CPC, reads as under:

> ?“2. That the property in suit belongs to the ancestors of the plaintiff. The grand father of the plaintiff/appellant had made the Will in favour of the plaintiff regarding the property in suit inter alia other properties in year 1929.
>
> 3. That at the time of trial of the suit the said will was not in possession of the plaintiff and the same was misplaced in the other lot of old papers of the plaintiff kept in store.
>
> 4. That even after best effort, and due diligence the aforesaid Will could not be available at the time of trial of the suit and now after due diligence and best effort it has been available and traced our.
>
> 5. That the papers were not available earlier so it could not be filed in the lower court.
>
> 6. That the said paper is very much relevant to establish the right, title or interest in the disputed property of the plaintiff so the same is very necessary to be taken on record.

> 7. That if the said paper is not taken on record the plaintiff will be deprived from getting justice."

61. The first Appellate Court allowed the application filed by the plaintiff under Order XLI Rule 27 CPC vide order dated 28.4.1999 which reads as under:

> "The Will in question is necessary for the disposal of the appeal because the applicant/appellant obtains right in the disputed property from this Will. The respondent/defendants have neither opposed it that as to why it was not produced in the subordinate court, there is no any relevancy of it. The applicant has given reason of not producing the Will in the subordinate court that this will was lost. In my opinion, the will appears to be necessary for the disposal of the appeal for the property which was obtained to the appellant earlier by this Will. Proper reason has been given for not producing this Will in the subordinate court."

62. This Court while dealing with an issue in Kalyan Singh Chouhan v. C.P. Joshi, AIR 2011 SC 1127, after placing reliance on a very large number of its earlier judgments including Messrs. Trojan & Co. v. RM.N.N. Nagappa Chettiar, AIR 1953 SC 235; Om Prakash Gupta v. Ranbir B. Goyal, AIR 2002 SC 665; Ishwar Dutt v. Land Acquisition Collector & Anr., AIR 2005 SC 3165; and State of Maharashtra v. M/s. Hindustan Construction Company Ltd., AIR 2010 SC 1299, held that relief not founded on the pleadings cannot be granted. A decision of a case cannot be based on grounds outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of the pleadings in that respect. No party can he permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. It was further held that where the evidence was not in the line of the pleadings, the said evidence cannot be looked into or relied upon.

63. In Bachhaj Nahar v. Nilima Mandal & Ors., AIR 2009 SC 1103, this court held that a case not specifically pleaded can be considered by the court unless the pleadings in substance contain the necessary averments to make out a particular case and issue has been framed on the point. In absence of pleadings, the court cannot make out a case not pleaded, suo motu.

Therefore, in view of the above, there is nothing on record to show that Maratha Government had made a gift to the ancestors of the plaintiff. The claim of the plaintiff to get a title by virtue of the Will cannot be taken note of being not based on pleadings. Even this Will is dated 1.3.1929, affidavits filed by the plaintiff/respondent no.1 before this Court reveal that on 26.3.2012 he was 80 years of age. The date of Will is 1.3.1929. So, it appears that the Will had been executed prior to the birth of the plaintiff/respondent no.1. In such a fact-situation, it could not have been taken into consideration without proper scrutiny of facts and, that too, without any pleading. In the plaint, the plaintiff for the reasons, best known to him, did not even make reference to the Will. In absence of any factual foundation of the case, based on Will, the first appellate Court committed a grave error taking into consideration the said Will. More so, the Will had not been proved as required under Section 68 of the Evidence Act.

64. The High Court had placed a very heavy reliance on the rent note allegedly executed by the fore-fathers of the plaintiff/ respondent no.1. The same reads as under:

> "Applicant caretaker masque noori darwaza which was constructed by Hafiz Ahmed is of our ancestor and who received cash payment which has been deposited register board no.38 treasury collectorate agra situated namner cantt., Agra, questioner is entitled to which is following mentioned money which has been stated after enquiry it be given to me, and if govt. has any objection to pay to me the information about the same given to us that condition govt. will be liable for the expenses of court I hafiz ahmed is receiver of rent of this land which has been situated at namner the rent which is rupees 22." The said rent note does not provide any description of the property nor does it bear any date, so it cannot be determined as on what date it was executed; what was the duration of the lease; in whose favour the lease had been executed; and what was the lease rent because it simply mentions that the rent to be Rs.22/-. It is not evident whether it was a rent for a month, or a year or for a total indefinite period. The rent note does not provide any period at all. In fact, such a vague document could not be linked in the circumstances proving the title.

65. Appellant/defendant No.1 produced the certified copies of the Extract from General Land Register prepared on 15.3.1948 in support of its case and denying title of the plaintiff/respondent No.1. The relevant part thereof reads as under:

Sl.No	Survey No.5	Existing Entry
.		
1.	------	------
2.	------	------
3.	------	------
4.	Area in acres	9.447 acres
5.	Description	Agricultural land
6.	Class	B-4
7.	By whom managed	Military Estate Officer
8.	Landlord	Govt. of India
9.	------	-------
10.	------	-------

Similarly, another land had also been shown in Survey No.6 in the same manner and showing the similar entries.

The High Court has considered the said entries and rejected the same on the ground that the partition among the ancestors of the plaintiff/respondent No.1 had taken place prior to enactment of the Cantonment Land Administration Rules, 1925, though there is nothing on record to prove the said partition. More so, the partition made among the ancestors of plaintiff/respondent No.1 in 1819 would not be a conclusive factor to determine the title of ownership in favour of the plaintiff/respondent No.1. The High Court dealt with the issue in an unwarranted manner as it

observed as under:

> "Clause B-1, B-2, B-3, B-4 and B-5 Classification of land was first time introduced by enactment of Cantonment Land Administration Rule 1925. The General Land Register was prepared near about in the year 1928, whereas the partition is in the year 1819. The appellant also failed to file the notification in the official gazette regarding survey Nos. 5 and 6 which are situated outside the notified area and to establish that such area was declared under Section 43A of the Cantonment Act, 1924. In the circumstances, I do not find that it is a case where this court in exercise of jurisdiction under Section 100 CPC can set aside the findings of fact arrived at by the court below."

66. The General Land Register and other documents maintained by the Cantonment Board under the Cantonment Act, 1924 and the Rules made thereunder are public documents and the certified copies of the same are admissible in evidence in view of the provisions of Section 65 read with Section 74 of the Evidence Act. It is settled legal position that the entries made in General Land Register maintained under Cantonment Land Administration Rules is conclusive evidence of title. (Vide: Chief Executive Officer v. Surendra Kumar Vakil, AIR 1999 SC 2294; and Union of India & Ors. v. Kamla Verma, (2010) 13 SCC 511).

67. In view of the above, we are of the considered opinion that the appellate courts dealt with the case in an unwarranted manner giving a complete go-by to the procedure prescribed by law.

68. The appellate courts examined the title of government instead of the plaintiff/respondent no.1. Such a course was not warranted. The title of government cannot be disputed. In any event possession of government for decades is not disputed. The plaintiff shifted the case from time to time but failed to prove his title.

69. To sum up: In view of the above discussion, we reach the following conclusion:

> (i) The first appellate court as well as the High Court committed grave error in shifting the burden of proof on the Union of India, appellant/defendant No.1, though it could have been exclusively on the plaintiff/respondent No.1 to prove his case.
>
> (ii) There is nothing on record to prove the grant/gift by the Maratha Government in favour of ancestors of plaintiff/respondent No.1 in the year 1800.
>
> (iii) Plaintiff/Respondent No. 1 miserably failed to prove the pedigree produced by him.
>
> (iv) The alleged partition in the year 1819 among the ancestors of plaintiff/respondent No.1 even if had taken place, cannot be a proof of title of the plaintiff/respondent No.1 over the suit property as the pedigree has not been proved. Presumption under Section 90 of the Evidence Act in respect of 30 years' old

document coming from proper custody relates to the signature, execution and attestation of a document i.e. to its genuineness but it does not give rise to presumption of correctness of every statement contained in it. The contents of the document are true or it had been acted upon have to be proved like any other fact. More so, in case the Will is ignored, there is nothing on record to show as how the plaintiff/respondent no. 1 could claim the title.

(v) The rent note produced by the appellant/defendant No.1 before the court below does not prove anything in favour of the plaintiff/respondent. The same being a vague document is incapable of furnishing any information and, thus, is liable to be rejected. The said document does not make it clear as who has executed it and in whose favour the same stood executed. It does not bear any date as it cannot be ascertained when it was executed. The lease deed cannot be executed without the signature/thumb impression of the lessee. The said lease does not contain any signature/thumb impression of any lessee and also the tenure of the lease has not been mentioned therein. The rent has been mentioned as Rs.22/- without giving any detail as to whether it was per day, fortnightly, monthly, quarterly or yearly or for ever.

More so, there is no reference to the said rent note in the pleadings contained in the plaint, therefore, it is just to be ignored.

(vi) Had there been any Will in existence and not available with the plaintiff/respondent No.1 for any reason whatsoever at the time of institution of the suit, the plaintiff/respondent No.1 could have definitely mentioned that Will had been executed in his favour by his maternal grand-father which could not be traced. Therefore, the application under Order XLI Rule 27 CPC was liable to be rejected. Even otherwise, the Will in absence of any pleading either in the plaint or first appeal could not be taken on record. More so, the Will was not proved in accordance with law i.e. Section 68 of the Evidence Act.

(vii) The court cannot travel beyond the pleadings as no party can lead the evidence on an issue/point not raised in the pleadings and in case, such evidence has been adduced or a finding of fact has been recorded by the Court, it is just to be ignored. Though it may be a different case where in spite of specific pleadings, a particular issue is not framed and parties having full knowledge of the issue in controversy lead the evidence and the court records a finding on it.

(viii) The first appellate court committed a grave error in deciding the application under Order XLI Rule 27 CPC much prior to the hearing of the appeal. Thus, the order allowing the said application is liable to be ignored as the same had been passed in gross violation of the statutory requirement.

(ix) The documents produced by the Union of India have not been properly appreciated by the first appellate court and the High Court.

(x) The courts below further committed an error holding that in case the document is taken on record, the document as well as the content thereof would be deemed to have been proved.

(xi) The appellate courts have also wrongly rejected the certified copies of the documents prepared by the Cantonment Board which were admissible in evidence.

(xii) The High Court committed a grave error in not addressing itself to the substantial questions of law framed at the time of admission of the appeal and it ought to have decided the same or after discussing the same a finding could have been recorded that none of them was substantial question of law.

(xiii) The suit was barred by the proviso to Section 34 of the Specific Relief Act, for the reason that plaintiff/respondent No.1, admittedly, had not been in possession and he did not ask for restoration of possession or any other consequential relief.

(xiv) The first appellate court as well as the High Court recorded a finding that the Union of India failed to prove its title over the suit land. The said courts did not realise that this was not the issue to be determined, rather the issue had been as to whether the plaintiff/respondent No.1 was the owner of the suit land.

(xv) The first appellate court has not decided the issue of admission of documents in correct perspective and recorded a perverse finding.

(xvi) Question of filing a document in rebuttal of a Will could not arise. The other party has to admit or deny the document as required under Order XII CPC. There could be no Will in favour of the Union of India by the predecessors of the plaintiff, on the basis of which it could also claim title.

(xvii) The courts below had wrongly drawn adverse inference against the appellant/defendant No.1 for not producing the documents as there was no direction of the court to produce the same. Neither the plaintiff/respondent No.1 had ever made any application in this respect nor he filed any application under Order XI CPC submitting any interrogation or for inspection or production of document. (xviii) The appellate courts have decided the appeals in unwarranted manner in complete derogation of the statutory requirements. Provisions of CPC and Evidence Act have been flagrantly violated.

70. In view of above, appeal succeeds and is allowed, judgments and decrees of the first and second appellate courts are set aside and the judgment and decree dated 20.1.1998 passed by Civil Court in Original Suit No.442 of 1995 is restored. No costs.

.....J. (Dr. B.S. CHAUHAN) .....J. (DIPAK MISRA) New Delhi, July 17, 2012
