Gulati and Co. P. Ltd. Vs. Ram Chander Through L.Rs and ors.

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SooperKanoon Citation : sooperkanoon.com/1123039

Court : Delhi

Decided On : Jan-22-2014

Judge : Valmiki J. Mehta

Appellant : Gulati and Co. P. Ltd.

Respondent : Ram Chander Through L.Rs and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % RSA No.140/2008 22nd January, 2014 GULATI & CO. P. LTD. .....Appellant Through: None. VERSUS RAM CHANDER THROUGH L.RS & ORS. ..... Respondents Through: Mr. Sanjay Poddar, Sr. Adv.with Mr. Vivek Mohanty and Mr. Govind Kumar , Advocates for R-1. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This appeal was passed over on the first call inasmuch as no one had appeared on behalf of the appellant. Even on the second call, no one appears for the appellant. Since this is an old RSA of the year 2008, and it is still pending at the stage of admission in spite of over two dozen dates of hearings, I do not propose to adjourn the matter and am disposing of the appeal as per the record and arguments urged on behalf of respondent no.1. Respondents have very vehemently opposed any adjournment because it is contended that appellant is enjoying benefit of possession of the suit property in spite of concurrent judgments of the courts below and only because of strategizing for getting the

case adjourned no one appears for the appellant.

2. This regular second appeal is filed impugning the judgment of the appellate court dated 16.4.2008 which has dismissed the appeal filed by the appellant therein, and who is appellant herein, against the judgment and decree dated 27.7.2005 of the trial court decreeing the suit for possession in favour of the respondent-plaintiff.

3. The subject matter of the dispute is a land comprised in khasra no.112/1 and 112/2 totalling to 10 bighas and 14 biswas, situated at village Shakurpur, Delhi. The suit land was owned by one Nihal Singh who was the father of the plaintiff and who had leased out the land to the appellant herein for a period of 20 years by means of a registered lease deed dated 1.6.1948. The lease was a lease of a land and not of a built-up property. The appellant/defendant no.1 constructed sheds on the subject land and also inducted defendant nos. 2 to 8 therein who are /were in possession of certain portions of the suit property. The lease expired on 31.5.1968 by efflux of time. Sh. Nihal Singh, the original owner expired on 21.12.1978 and whereafter Sh. Ram Chander the original plaintiff, and who is the son of the deceased Nihal Singh, became the owner of the suit property. It may be mentioned that Sh. Ram Chander died during the pendency of the proceedings in the courts below and he was substituted thereafter by his legal heirs, who are now the contesting respondents 1(i) to 1(vii). Since the appellant failed to vacate the suit property after expiry of the lease, the subject suit for possession came to be filed.

4. The appellant before the courts below essentially laid three defences seeking dismissal of the suit for possession:(i) Appellant/defendant no.1 had became owner of the suit property by virtue of adverse possession, more so because the land in question had in fact been acquired by Chief Commissioner of Delhi under Section 3 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 vide notification dated 30.12.1950. (ii) The original plaintiff Sh. Ram Chander had no locus standi to file the suit inasmuch as, other legal heirs of Sh. Nihal Singh were not added as parties to the suit. (iii) The third defence was a facet of first defence inasmuch as in the third defence it is contended that once the land is

acquired, appellant was not bound to give possession to the plaintiff but only to the appropriate authority. I may note that a reference in this judgment to the contesting respondents will mean reference to the plaintiff and all persons, who subsequently became the plaintiff in the suit.

5. I may also state that before the appellate court appellant also moved two applications. One was for leading of additional evidence under Order 41 Rule 27 CPC and the second was for framing of additional issues under Order 14 Rule 5 CPC. These applications were dismissed by the appellate court by giving detailed reasoning including the aspects that such applications which are filed more than 24 years after the suit was filed cannot be allowed, more so because no person can be allowed to fill in alleged lacunae in this case by leading evidence although innumerable number of opportunities were given for leading of evidence before the trial court and the clock thus cannot be set back. The appellate court has also disbelieved the case as set up by the appellant that the three documents which were sought to be led in evidence were not earlier available to the appellant. The documents were the letter dated 8.3.1952 from the Refugee Cooperative Housing Society addressed to the appellant, letter dated 27.3.1952 written by the appellant to Sh. Nihal Singh and the accompanying AD card with respect to this letter.

6. So far as the first and third defences of the appellant are concerned, the same can be dealt with together. In law, once a tenant will always be a tenant. How so long is the possession of the tenancy premises by the tenant, the tenants possession does not get converted to adverse possession and thus a title holder /owner. In order to convert the title of tenancy into that of an owner there has to be categorical and clear-cut evidence led as to on which specific date/time/month and year the tenancy was relinquished and which is accordingly so informed to the landlord. At the time of relinquishment of tenancy title, a specific case has to be taken that the tenant such as the appellant is now the owner and his possession of the tenancy premises is not as a tenant but in his own right as an owner. No evidence in this regard has been led before the trial court showing any specific notice to late Sh. Nihal Singh or the plaintiff who file the suit that the appellant-tenant is no longer the tenant and the original landlord is no longer the owner because the appellant-tenant has set up a title in itself and which is adverse to the

original owner/landlord/plaintiff. The documents which have been relied upon on behalf of the appellant are only with respect to returns filed before the Urban Land Ceiling Department in 1976 as also applying to DDA in 1977 for sanctioning of Group Housing Flats and not a specific notice to the owner. Firstly, these documents cannot help the appellant because the suit itself was filed on 12.2.1980 ie not 12 years after these documents. Secondly, these documents, in my opinion, cannot lead to commencement of adverse possession as against the original owner/landlord/Nihal Singh/plaintiff inasmuch as, the tenancy title comes to an end only on making of a specific assertion being made to the landlord that the tenancy had come to an end and the tenant in fact claims title to the property of an owner and which is adverse to the owner. Also, non -payment of a rent for a longer period of time will not convert possession of tenant to the possession of an owner because it is settled law that long possession is not adverse possession. For commencement of adverse possession, setting up of a title adverse to the owner-landlord is necessary. In this regard the relevant observations of the Supreme court are contained in paras 13 &14 of the judgment reported as Chatti Konati Rao & Others Vs. Palle Venkata Subba Rao (2010) 14 SCC316 These paras read as under:

13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of Karnataka Board of Wakf v. Government of India and Ors. (2004) 10 SCC779 It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec

precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina AIR 1964 SC1254 Parsinni v. Sukhi : (1993) 4 SCC375and D.N. Venkatarayappa v. State of Karnataka : (1997) 7 SCC567 Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma : (1996) 8 SCC128 14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The Plaintiff is bound to prove his title as also possession within 12 years and once the Plaintiff proves his title, the burden shifts on the Defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the Defendant should be adverse to the Plaintiff and the Defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims

adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

7. These relevant aspects have been dealt with by the appellate court in paras 22 to 24 of its judgment (which paras are also touch upon locus of the plaintiff) and which read as under:22. RSA1402008 In the present case, a suit for possession and recovery of Rs. 1440/- was filed on behalf of the plaintiff/LRs of respondent no.1 against the defendant no.1/appellant and the remaining defendant/respondents. The defendants contested the said suit Page 8 of 23 and after trial, the aforesaid suit was decreed in favour of the plaintiff/respondent no.1 and against the defendant no.1/appellant and remaining defendant respondents vide impugned judgment/decree dated 27.7.2005 passed by the ld. Trial Court. It has been submitted on behalf of the appellant that the impugned judgment/decree passed by the ld. Trial Court is against the law and facts of the case. It is submitted that the ld. Trial Court has failed to appreciate the fact that the respondent claimed to be the only legal heirs of his father whereas the respondent had two more sisters at the time of institution of the suit and as such the Ld. Trial court committed an error of law by holding that the sisters of respondent are not necessary parties to the suit. It is further submitted that the ld. Trial Court also wrongly applied the principles of law by holding that a co owner can file a suit for possession, however the aforesaid submissions made on behalf of the appellant are devoid of any merits and are contrary to record as the perusal of the impugned judgment reveals that the ld. Trial Court has properly dealt with the issue regarding the non impleadment of the sisters of the respondent as parties to the suit and has come to the correct conclusion that the suit filed on behalf of the plaintiff/respondent no.1 was not bad for non joinder of the said sisters as parties to the suit. From the material on record, it is clear that the said sisters of

respondent no.1 have never objected to the institution of the suit by the plaintiff/respondent no.1 nor had they subsequently objected to the plaintiff/respondent no.1 continuing with the suit alone nor they have ever challenged the mutation in favour of the plaintiff. In any event, the objection regarding the non impleadment could or should have been raised by the sisters of the respondent no.1 themselves and the defendant no.1/appellant does not have any locus standi and cannot be allowed to step in the shoes of the sisters who have never challenged the mutation of the suit land in favour of the plaintiff nor have they ever objected to the institution of the suit of the plaintiff. Even otherwise, the presence of the sisters of respondent no.1/plaintiff does not appear to be necessary for the determination of matter in controversy between the parties in the suit before the Ld. Trial Court and as such the Ld. Trial Court has rightly held that the suit of the plaintiff/respondent no.1/plaintiff as parties to the suit. Further, it is well settled law that the suit for possession can be instituted and maintained by one of the co-owners and as such it has been rightly held by the ld. Trial Court that the suit instituted by the plaintiff/respondent no.1 is maintainable in the facts and circumstances of the present case.

23. It has been submitted on behalf of the appellant that by virtue of notification of acquisition dated 30.12.1950, the father of the plaintiff consciously and deliberately abandoned all his rights and interest in the suit land and never demanded rent from the appellant nor bothered about the suit land and for the same very reason the father of the plaintiff had not joined the litigation in respect of the suit land between the Refugees Cooperative Group Housing Society and the defendant No.1/appellant. It is submitted that the father of the plaintiff did not participate in the litigation as he had received compensation from the Refugees Cooperative Group Housing Society and as such he had no right or interest in the suit land. It is further submitted that the Id. Trial Court has committed an error of law by holding that since the acquisition of the suit land was not completed, therefore, the father of the plaintiff has right and title in the suit land. It is also submitted that the ld. Trial court has failed to appreciate overall consequences flowing after the notification dated 30.12.1950 and its effects and committed an error by relying upon the observations made in the judgment dated 1.3.1966 delivered by Sh. G.R. Luthra, the then Sub Judge, Ist Class, however the aforesaid contentions put forward on

behalf of the appellant does not hold water and are contrary to the record as perusal of the impugned judgment reveals that the ld. Trial Court has properly dealt with the issues pertaining to the alleged acquisition of the suit land in the year 1950 and the consequences thereof and have come to the correct conclusions on the basis of the material available on record. It is pertinent to note here that acquisition of the suit land has taken place vide Notification and the Award No.128/86-87. In these circumstances, had the acquisition of suit land taken place vide notification of the year, 1950, there would not have any occasion for the acquisition of the suit land again vide aforesaid notification & award of the year 1986. It implies that the suit land was never acquired vide notification dated 30.12.1950 as has been alleged on behalf of the appellant. It has also been stated on behalf of the appellant that the father of the plaintiff/respondent No.1 has abandoned has rights and interest in the suit land after receiving the compensation from the Refugee Cooperative Group Housing Society however the said submissions made on behalf of the appellant is again devoid of any merits and is contrary to the record as from the material on record, it clear that the suit land was never acquired vide notification of the year 1950 and further the appellant/defendant No.1 has also failed to bring on record any evidence, documentary or otherwise, to prove that any compensation was ever received by the father of the plaintiff/respondent No.1 pursuant to the aforesaid notification. In this regard, the Id. Trial Court has rightly held that the father of the plaintiff/respondent No.1 and thereafter the plaintiff/respondent no.1 have never abandoned their right, interest or title in the suit land.

24. It has been further submitted on behalf of the appellant that the Ld. Trial court has committed error by relying upon the mutation wherein the name of the respondent was mentioned as owner of the suit property and ignored that fact that neither the plaintiffs father nor the plaintiff dealt with the Revenue Deptt. After 1951 until the death of Sh. Nihal Singh in 1978 and it was only in 1979 before filing of the suit that the plaintiff got his name mutated in the revenue record. It is submitted that the Ld. Trial Court has committed an error by holding that the lease between the appellant and the respondents survived even after 1951 and stood expired by efflux of time only in the year of 1968, however the said submissions made on behalf of the appellant are devoid of any merits and are contrary on

record as perusal of the impugned judgment shows that the ld. Trial Court has properly dealt with the issues regarding the mutation of the suit land in the name of the plaintiff and expiry of the lease deed in respect of the suit land by efflux of time in the year 1968. In the present case, it is not disputed that Sh. Nihal Singh father of the plaintiff/respondent No.1 was the absolute owner of the suit land, who inducted the appellant/defendant No.1 as tenant in the suit land for a period of 20 years by means of the lease deed dated 1.6.1948. After the death of the said Sh. Nihal Singh, his only son Sh. Ram Chander, plaintiff/respondent No.1 herein, inherited the suit land and mutation of the suit land in his name has also been recorded in the revenue records. In the present case, admittedly the suit land was leased out to the appellant/defendant no.1by Sh. Nihal Singh father of the plaintiff/respondent No.1 and in this regard it has been rightly observed by the Ld. Trial Court that a person who has lawfully come in to the possession as a tenant cannot by setting up, during the continuance of this relation, any title adverse to that of landlord inconsistent with the legal relations between them, acquire title as owner or any other title inconsistent with that under which he was let into possession. In view of the above and having regard to the fact and circumstances of the case and in view of the material available on record, it is clear that the respondent no.1/appellant has failed to produce any evidence, documentary or otherwise, to substantiate its plea of adverse possession or prescription. In fact, there is nothing on record to show that the possession of the appellant was ever hostile to the true owner and as such it has been rightly held by the ld. Trial Court that the appellant/defendant no.1 has failed to prove on record that he became the owner of the suit land by the prescription or adverse possession. In support of his contentions, ld. Counsel for the appellant has relied upon the case law cited as AIR 1994 SC227 1(2007) CLT294 AIR1982 Delhi 290, 80 (1999) DLT597 II (2006 CLT189SC II (2005) CLT255SC, AIR 1976 SC1126and 138 (2007) DLT776DB, however, the said case law is not applicable in the present case as the fact and circumstances of the present case are different from the fact and circumstances of the cases discussed in the aforesaid case law and in my considered opinion, the said case law is not of any help to the appellant in the present case.

(underlining added) 8. I am in complete agreement with the aforesaid observations and conclusions of the appellate court.

9. At this stage, I must note that the trial court has passed a detailed judgment running into as many as 132 pages and exhaustively dealt with stands and the evidences led by the parties. The contentions both of fact and law have been discussed in the trial courts judgment which has been upheld by the first appellate court.

10. So far as the aspect that the land in question stood acquired and therefore the original plaintiff was no longer the owner, the appellate court has dealt with this aspect in para 23 of its judgment which has been reproduced above and which rightly shows that the land in question was never acquired. The appellate court has rightly noted that if land was acquired in the year 1950 where was the question of another notification and award for the suit land being passed in 1986.

11. To the aforesaid conclusions of the courts below I must add that whatever rights the owner- landlord has, even assuming land is acquired, that will not prevent the legal obligation of the appellant-tenant to handover possession back to the plaintiff-landlord because the tenant had taken possession from the plaintiff-landlord and there is law that tenant is bound to return possession only to the plaintiff landlord. If the land is acquired (and which really has not been so) the issue will be of taking possession of the suit land by the acquiring authority from the plaintiff-landlord and not from the appellant-tenant. Therefore, the contention of the appellant-tenant that he is not bound to legally handover possession to plaintiff-landlord is a misconceived stand and is rejected as such.

12. So far as the argument that the plaintiff had no locus standi to file the suit inasmuch as other legal heirs also had inherited the right, it is noted that the appellate court in this regard has rightly arrived at a conclusion that the other legal heirs have never disputed the right of the original plaintiff in any manner . It is now settled law by virtue of catena of judgments of the Supreme Court which are passed in cases of bona fide necessity by the landlords under the respective Rent Control Acts, that unless objections of other legal heirs are shown by the tenant for possession being claimed only by one of the co-owners/co-landlords, it would not be that the eviction petition will not be maintainable and eviction petition can always be decreed in favour of one of the co-owners and against the tenant for the

reason that trespasser who does not have a permission to stay in possession of the suit property is bound to handover possession of the suit property to a person who has better title such as one of the co-owners/co-landlords. I, therefore, agree with the conclusion arrived at by the courts below, and hold that the appellate court has rightly held in para 24 of the judgment of the appellate court reproduced above that the appellant-defendant no.1 failed to prove that the plaintiff had no locus standi to file the subject suit for possession. 13(i) Now let me turn to the issue as to whether the appellate court rightly dismissed the applications under Order 41 Rule 27 CPC and Order 14 Rule 5 CPC. Firstly, in this regard, it must be noted that I do not find any ground in the grounds A to J in which a specific stand giving reasons is taken as to why the appellate court was not justified in dismissing the applications under Order 41 Rule 27 and Order 14 Rule 5 which were filed more than after 24 years of filing of the suit. I have however noted the fact that question of law 2(d) does raise an issue in this regard indirectly. (ii) In my opinion all the issues in question have been decided by the appellate court effectively, and there was no need for framing of additional issues or allowing the application under Order 41Rule 27 CPC. Once parties are aware of the respective stand of the opposite parties, and parties go to trial knowing the cases of the opposite parties, and thereafter detailed judgments are passed dealing with all aspects of the case, it cannot be said that additional issues are required to be framed because new issues which are sought to be framed are really covered under the issues which have been framed in the suit and the conclusions and discussions in the impugned judgment. The real issue is only entitlement of the plaintiff-landlord to take back possession of the suit property and the converse issue of the appellantdefendant no.1 becoming the owner of the property by adverse possession and that whether the land in question has been acquired for the plaintifflandlord no longer to have entitlement to take back possession from his erstwhile tenant-appellant-defendant no.1. I have already made observations above that the tenant cannot dispute its liability to handover possession back to the owner-landlord, and thereafter if there is an issue of possession to be given to the alleged acquiring authorities then the same will be issue only between the owner-landlord and the acquiring authority. In the facts of the case such as the present, the appellant-tenant cannot raise frivolous defences to prevent handing

over possession of the owner-landlord.

14. The appellate court in this regard has given valid and general reasons to dismiss the applications under Order 41(27) and Order 14(5) CPC and I can do no better than reproduce those observations as contained in the

8. I have carefully considered the arguments on application-u/o 41 rule 27 r/w section 151 CPC and have carefully cone through the record of the case. I have also carefully perused the case law relied upon by the ld. counsels for the appellant and LRs of respondent no.1.

9. The present application has been moved on behalf of the appellant in accordance with the provisions of Order 41, rule 27 of the CPC, which deals with the production of additional evidence in appellate court and it provides that parties to an appeal shall not be entitled to produce additional evidence whether oral or documentary, in the appellate court unless and until the court from whose decree the appeal has been preferred has refused to admit evidence. It further provides that additional evidence can also be allowed at the appellate stage if the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence such evidence was not within his knowledge or could not have been produced by it even after the exercise of due diligence at the time when the decree appealed against was passed. In the case titled as Kamlam (dead) and another Vs. Ayyasamy and another (reported as (2001) 7 Supreme Court cases 503), while dealing with Order 41rule 27 CPC, It has been laid down by the Honble Supreme Court of India that:

Incidently the provisions of order 41 rule 27 have not been engrafted in the code so as to patch up the weak points in the case and to fill up the omission in the court of appeal, it does not authorize any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred onto the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.

In the aforesaid case, it has been further laid down by the Honble Supreme Court of India that:

Needless to record that the courts shall have to be cautious and must always act with great circumspection in dealing with the claims for letting in additional evidence particularly in the form of oral evidence at the appellate stage and that too, after a long lapse of time. In our view a plain reading of order 41 rule 27 would depict that the rejection of the claim for production of additional evidence after a period of 10 years from the date of filing of the appeal, as notice above, cannot be termed to be erroneous or an illegal exercise of discretion. The three limbs of Rule 27 do not stand attracted.

In the present case also, the application u/s 41 rule 27 CPC have been moved almost after 9 months of the filing of the present appeal and after about 26 years of the filing of the suit before the ld. Trial Court and no reasonable or justifiable explanation has been placed on record on behalf of the appellant as to why the said application was not moved at an earlier stage. Order 41 rule 27 CPC provides that the parties to an appeal may be allowed to adduce additional evidence if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted. In the present case, admittedly neither any application for additional evidence was moved by the applicant/appellant before the ld. Trial court nor any such application was dismissed by the ld. Trial court. Order 41 rule 27 CPC further provides that the parties may also be allowed to lead additional evidence if such evidence was not in his knowledge despite exercise of due diligence or which could not have been produced by it even after the exercise of due diligence at the time when the decree appealed against was passed and from the averments made in the present application, it can not be said that evidence sought to be produced could not have been produced even after the exercise of due diligence at the time before the passing of decree by the Ld. Trial Court. Further the provisions of Order 41, rule 27 CPC cannot allowed to be used by a party to fill up the lacunae or omission in its case. Ld. Counsel for the appellant has relied upon the case law cited as AIR 1951 SC193 AIR 1965 SC1008 AIR 1979 SC553 AIR1999 Delhi 362, AIR1999 Gauhati 39, however the aforesaid case law is not applicable in the present case as fact and circumstances of the present case are different and in my considered opinion, the aforesaid case law is not of much help to the applicant/appellant in the present case in view of the law laid down by the Honble Supreme Court of India in the case reported as 2001

7 SCC503 The present application u/o 41 rule 27 r/w section 151 CPC moved on behalf of the applicant/appellant for leading additional evidence appears to be an attempt on the part of the appellant to fill up the lacunae in its case, which is not permissible, either in equity or in law. Further, the present application moved on behalf of the applicant/appellant also appears to be an after thought as in the present case, the suit was filed in the year 1980 and the appeal was filed in the year 2005 and the present application have been moved on behalf of the applicant/appellant only in the year 2006 and no reasonable or justifiable ground for delay in the filing of the present application have been mentioned on behalf of the appellant. Thus in view of the aforesaid discussion and observations and having regard to the fact and circumstances of the present case, I am of the considered opinion that the present application u/o-41, rule 27 r/w section 151 CPC moved on behalf of the appellant is devoid of any merits and the same is accordingly dismissed.

10. In addition to above, an application u/o 14 rule 5 and Section 151 CPC has also been moved on behalf of the appellant. The reply to the said application has been filed on behalf of the respondent no.1 11. I have heard the arguments on the aforesaid application u/o 14 rule 15 r/w section 151 CPC put forward by the ld. Counsels for the appellant and LRs of respondent no.1 and have carefully gone through the record of the case.

12. It has been submitted by the Ld. Counsel for the appellant that the present appeal has been filed against the impugned judgment/decree passed by the Ld. Trial Court in Suit No.775/2002 and in the said suit, issues were framed by the Ld. Trial Court on 12.7.1982 but due to oversight, the issues on the basis of the specific assertions made in para-8 of the preliminary objections and paras-1 & 7 of reply on merits in the W.S have been framed although the said issues were very material and necessary. It is submitted that on the basis of the said assertions, the issue i.e. Whether the lease between the parties stood forfeited in terms of law, as pleaded by the defendant in Para-8 of preliminary objections and Para-1 of merits in its written statement ?.OPD and What is the effect of the decisions in the suit/appeal in the litigation filed by the Refugee Coop. Society against the defendant, as pleaded in Para-1 of the written statement?. OPD are required to be

framed and it has been prayed that the aforesaid proposed issues may be formulated in the matter and the parties may be allowed to adduce further evidence/arguments on the said issues. In support of his contentions, ld. Counsel for the appellant has relied upon the case law cited as AIR 2001 SC490 13. On the other hand, it has been submitted by the Ld. Counsel for the respondent no.1 that the present application of the appellant is wholly misconceived, meritless and an abuse of the process of law and the said application has been filed by the appellant only to delay the matter. It is submitted that the present application for framing of proposed issues and allowing the parties to adduce further evidence is not maintainable as the power u/o 14 rule 5 CPC can only be exercised during the pendency of the suit and before passing a decree. In this matter, the issues were framed by the Ld. Trial Court on 12.7.1982 and judgment/decree was passed on 27.07.2005 and for 23 years there was no grievance by the appellant regarding non framing of the proposed issues. It is further submitted that the proposed issues put forward on behalf of the appellant have already been covered by the issue nos. 1,4,6,7,9 and 13 framed by the Ld. Trial Court during the trial of the suit and as such the framing of the aforesaid proposed issues is not required. It has been submitted that neither the interest of justice, nor the material on record, nor the conduct of the appellant warrants an exercise of discretion by the court and exercise of powers u/o 14 rule 5 CPC on inherent powers u/s 151 CPC and the application is badly hit by delay and laches and it has been prayed that the present application moved on behalf of the appellant may be dismissed with cost.

14. I have carefully considered the arguments on application u/o 14 rule 5 and section-151 CPC and have carefully gone through the record of the case. I have also carefully perused the case law relied upon by the Ld. Counsel for the appellant.

15. In the present case, the perusal of the record reveals that the issues were framed on 12.7.82 by the Id. Trial Court and the suit was disposed of vide impugned judgment/decree dated 27.7.2005 and thereafter the present appeal was filed. Now, during the pendency of the appeal, the present application for framing of additional issues have been moved in July 2006 i.e almost 24 years after framing of issues and the perusal of the application reveals that no reason

whatsoever for delay in moving the present application has been mentioned on behalf of the appellant. In addition to above, the present application has been moved on behalf of the appellant in accordance with the provisions of order 14 rule 5 CPC which deals with the power to amend and strike out the issues and it provides that the court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit. It also provides that the court may also at any time before passing a decree strike out any issue that appear to be wrongly framed or introduced. In these circumstances, in view of the provisions of order 14 rule 5 CPC, it is clear that an application under the said provision could have been moved only before passing of a decree, however the present application has been moved after passing of the impugned judgment/decree by the Id. Trail Court and it has not been explained on behalf of the appellant as to how the present application u/o 14 rule 5 is maintainable at the appellate stage. Even otherwise, the issues proposed to be formulated by way of the present application have already been covered by the various issues framed by the Id. Trail court on 12.7.82 Further, the perusal of the record also shows that the Id. Trial Court in its impugned judgment has dealt with the issues proposed to be formulated by way of the present application. In these circumstances, in my considered opinion, there is no requirement or necessity for framing of additional issues, as prayed for in the present application. The case law relied upon by the Id. Counsel for the appellant is also not applicable in the present case as the facts enumerated therein are different and are distinguishable for the facts and circumstances of the present case. Thus, in view of the aforesaid discussion and observations, I am of the considered opinion that present application u/o 14 rule 5 and Section 151 CPC moved on behalf of the appellant is devoid of any merits and the same is accordingly dismissed. (underlining added) 15. A second appeal under Section 100 CPC lies only if there arise substantial questions of law. Appreciation of evidence and arriving at conclusions thereupon where two views are possible cannot be said to raise a question of law, much less a substantial question of law. In fact, it must be noted that even if I was sitting as the first appellate court, I find no illegality committed by the trial court in decreeing the suit for possession filed by the plaintiff-landlord.

16. In view of the above, there is no merit in the appeal, and the same is therefore dismissed, leaving the parties to bear their own costs. JANUARY22 2014 ib RSA1402008