

9. Nattha Singh & ors. Vs The Financial Commissioner, Taxation, Punjab & ors.; (1976) 3 SCC 28

10. Basant Kumar Mehrotra Vs Ram Laxman Janki Virajman Mandir; 2018 (36) LCD 1094

11. Jai Narain Pandey and after him Ram Bilas Pandey Vs Lallan Tiwari & ors.; 1972 SCC OnLine All 258.

(Delivered by Hon'ble Rajnish Kumar, J)

1. Heard, Shri Sudeep Seth, learned Senior Advocate assisted by Shri Sridhar Awasthi, learned counsel for the plaintiff-appellant and Shri Pankaj Srivastava, learned counsel for the defendant-respondent.

2. The instant Second Appeal has been filed for setting aside the judgment and decree dated 26.02.2005 passed in Civil Appeal No.33 of 2004; Shiv Raj Versus Ishtiyak Ali by the Additional District Judge, Court No.1, Unnao, by means of which the appeal has been allowed with costs and the judgment and decree dated 30.04.2004 passed by the trial court has been set aside. The further prayer has been made for decreeing the suit with costs.

3. Learned counsel for the plaintiff-appellant submitted that the plaintiff-appellant had filed a suit for permanent injunction. He is the owner/Bhumidhar and in possession of Arajji No.1390, Gram-Rasoolpur Balia, Pargana-Mohan, Tehsil-Hasanganj, District-Unnao. The said land is in two parts Ka and Kha. Part Ka is in the ownership of the plaintiff-appellant and his co-sharers, but since they were living out therefore they were not impleaded in the suit and the suit was filed for their benefit

also. He is the exclusive owner of part Ka. The plaintiff-appellant had placed on record Khasra and Khatauni and other records, which are sufficient to prove the ownership of the plaintiff-appellant and identifiability of the land in dispute, therefore, even if the area was not disclosed by the plaintiff-appellant, it would not have made any difference. Admittedly the defendant-respondent is the owner and in possession of the adjacent plot No.1386, therefore, he has no concern with the Plot No.1390. The suit was decreed by the trial court after considering the pleadings, evidence and material on record. The defendant-respondent had filed an appeal. The appeal has wrongly and illegally been allowed without considering the pleadings, evidence and material on record and the provisions of Order 7 Rule 3 of Civil Procedure Code, 1908 (here-in-after referred as CPC), therefore this Second appeal is liable to be allowed and the suit filed by the plaintiff-appellant is liable to be decreed.

4. Per contra, learned counsel for the defendant-respondent submitted that the learned trial court had failed to consider that the plaintiff-appellant had not given the area in possession of the plaintiff-appellant because the defendant-respondent is in possession of some portion of Gata No.1390, whereas it was the duty of the plaintiff-appellant to get the property identified, which was not done and the learned trial court had allowed the suit without considering it and evidence on record. The learned lower appellate court has rightly and in accordance with law allowed the appeal because the area in ownership and possession of the plaintiff-appellant and the co-sharers has not been given and the same was not got identified. He further submitted that the suit filed by

the plaintiff-appellant suffers from material concealment of fact because two of the sisters of the plaintiff-appellant, namely, Smt. Azmat Ahsan and Kudrat Ahsan alias Nadrtula Momina and co-sharers and having 1/8 share each in entire plots had gone to Pakistan, settled there and acquired citizenship of Pakistan near about 1961-62. Therefore, their share vested in Custodian of Enemy Property of India in the year 1966 as enemy property, but this fact was not disclosed. The defendant-respondent, after coming to know about it and obtaining the relevant documents has filed an application under Order 41 Rule 27(1) (aa) of CPC (C.M. Application No.06/2022) for taking those on record as additional evidence.

5. He further submitted that the defendant-respondent has filed the Notification dated 10th of September 1965, according to which the immovable property in India belonging to or held by or managed on behalf of all Pakistan National vested in the Custodian of Enemy Property for India with immediate effect and the details of the properties of Azmat Ahsan and Kudrat Ahsan alias Nadrtula Momina which have vested in the Custodian of Enemy Property as annexures No.A-1 and A-2 to the aforesaid application. He further submitted that coming to know about the same it has been recorded in the revenue records also and in proof thereof the Khatauni of 1428-1433 Fasali have been annexed with the application. He further submitted that the Assistant Custodian of Enemy Property, Lucknow has directed to the District Magistrate/Ex Officio Deputy Custodian (Enemy Property), District-Unnao (U.P.) by means of letter dated 30.01.2019 to take the custody of the property of Pakistani citizens, namely, Azmat Ahsan and Nudrat Ahsan @

Nudarutul Momina daughters of Late Ehtiram Ali situated in Gram -Rasoolpur Vakiya, Pargana-Mohan, Tehsil-Hasanganj, District-Unnao. He also submitted that after coming to know about the aforesaid orders the plaintiff-appellant filed a suit for partition before the Sub Divisional Officer, Hasanganj, District-Unnao impleading his aforesaid sisters, who had become Pakistani Citizens as respondent no.1 and 2 and also on behalf of one Bibi Farhat Ahsan, who had already died. However the suit has been withdrawn after filing of the aforesaid application by the defendant-respondent as disclosed by the plaintiff-appellant in the supplementary affidavit, but the aforesaid conduct indicates that the plaintiff-appellant has neither only concealed the material fact in these proceedings but is also in the habit of concealing the material facts and obtaining the decrees, orders by concealment of material facts and misleading the court. Thus the submission is that the documents filed by the defendant-respondent may be taken on record and the appeal and the suit may be dismissed on the ground of material concealment of facts.

6. Learned counsel for the plaintiff-appellant submitted that the application under Order 41 Rule 27 CPC filed by the defendant-respondent is misconceived and not tenable and liable to be dismissed. The application for additional evidence can be allowed only if 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 and permitted to be taken on record. The application cannot be allowed to fill in lacunae or to patch up weak points in the

case. He further submitted that the defendant-respondent has not succeeded on the issue of non-joinder of necessary parties i.e. co-owners, but no appeal has been filed challenging the same and now he wants to raise this issue through application under Order 41 Rule 27 CPC, therefore it is misconceived and not tenable. The present Second Appeal is to be decided on the basis of the pleadings in the plaint, the written statement and evidence on record regarding description of land in dispute, on which two substantial questions of law have been formulated and this court cannot travel beyond that. The additional evidence sought to be brought on record has no concern with the substantial questions of law formulated in this appeal. The substantial questions of law formulated in this appeal do not require the additional evidence sought to be produced by the defendant-respondent. Even otherwise the defendant-respondent has failed to establish that the evidence, which is sought to be brought on record was not within the knowledge or could not be produced by him despite exercise of due diligence before the trial court. That too when the documents sought to be placed on record by way of additional evidence are public documents and were in public domain. Thus the submission is that the application under Order 41 Rule 27 CPC is liable to be dismissed and the appeal is liable to be decided on the substantial questions of law formulated by this court.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. This appeal was admitted on the following substantial questions of law:-

(1) Whether the description of the land in dispute was necessary

when the appellant had mentioned the plot number? And

(2) Whether the appellate court is justified in allowing the respondent's appeal and dismissing the appellant-plaintiff's suit for permanent injunction on the ground of unidentifiability of the land in dispute?

9. The Suit for permanent injunction was filed by the plaintiff-appellant claiming title and possession over Gata No.1390 as Bhumidhar, situated at Gram Rasoolpur Valiya, Pargana-Mohan, Tehsil-Hasanganj, District-Unnao. The said plot is alleged to have two parts 1390-Ka and 1390-Kha, out of which part Ka is in the ownership of the plaintiff-appellant alongwith other co-owners, therefore, it was filed for the benefit of those co-owners also. He is the exclusive owner of part Kha. The suit was contested by filing the written statement denying the averments made in the plaint. Thereafter issues were framed and the evidence was adduced by the parties. The suit was decreed by the trial court. Being aggrieved the appeal was filed by the defendant-respondent, which has been allowed on the ground that the plaintiff-appellant has failed to show the area of the plot, therefore, the land in dispute is unidentifiable. Hence this Second appeal has been filed.

10. The defendant-respondent has filed an application under Order 41 Rule 27 CPC on the ground that the suit was filed by the plaintiff-appellant on behalf of the co-sharers also in regard to the part of the land in dispute, alleging that the disputed plot No.1390 of Khata No.22 is in two parts i.e. 1390-Ka and 1390-Kha, situated in village-Rasoolpur Valiya, Pargana-Mohan, Tehsil-Hasanganj, District-Unnao.

There are 8 co-bhumidhars/co-sharers in Khata No.1390-Ka including appellant, two brothers and five daughters of Ehhatram Ali. Out of the said co-owners, two daughters, namely, Smt.Azmat Ahsan and Kudrat Ahsan alia Nadrtula Momina having 1/8 share each in the entire plots including said plot of Khata No.22 have gone to and settled in Pakistan in the year 1961-62 and acquired citizenship of Pakistan.

11. The Government of India issued Notification No.12/2/65-E dated 10.09.1965 in exercise of Power conferred by Sub Rule(1) of Rule 133-V of the Defence of India Rules, 1962 by which all immovable property in India belonging to or held by or managed on behalf of all Pakistani Nationals shall vest in the Custodian of Enemy property of India with immediate effect. In pursuance of the said Notification the 1/8 share out of immovable property of entire plots of Khata No.22 including plot no.1390-Ka of Smt. Ajmat Ahsan and Kudrat Ahsan alias Nadrtula Momina have been declared as enemy property and vested in the Custodian of Enemy Property of India in the year 1966 because they had acquired the citizenship of Pakistan. Accordingly the properties as disclosed from Sl.No.18 to 88 in the list of immovable enemy property contained in annexure no.A-2 had vested in the Custodian, but without disclosing it, the names of all the co-sharers were got recorded in the revenue records. The plaintiff-appellant alongwith co-sharers illegally sold the shares in the enemy properties by concealing the fact of enemy property and on coming to know, the office of Assistant Custodian, Enemy Property wrote a letter dated 30.01.2019 to the District Magistrate/Ex-Officio Deputy Custodian informing him that the properties and shares of Smt. Ajmat Ahsan and Kudrat

Ahsan alias Nadrtula Momina have been declared as Enemy properties in the year 1966 and accordingly it had vested in the Custodian and it remains in its custody under Section 5 of the Enemy Property Act, 1968, therefore, the control of the same may be taken and in the revenue records Custodian Enemy Property against their names be got recorded. In pursuance thereof the necessary incorporation has been made in the revenue records after the order of the competent authority.

12. A complaint was made by one of the relatives, namely, Ehtesham Imtiyaz Ali of the plaintiff-appellant for making an inquiry and cancellation of sale deeds and ensuing the possession of the Enemy properties on 20.02.2021. In pursuance thereof a letter dated 17.03.2021 was written by the Assistant Custodian, Enemy Property to the District Magistrate/Ex-Officio Deputy Custodian (Enemy Property), district-Unnao for making an inquiry in the matter and protection of the enemy properties of the said Pakistani nationals. The plaintiff-appellant filed a suit for partition under Section 116 of the U.P. Revenue Code 2006 alongwith co-sharers arraying the aforesaid Smt. Ajmat Ahsan and Kudrat Ahsan alias Nadrtula Momina as respondents no.1 and 2 concealing the fact that they became Pakistani citizens, whereas they have died in the year 2009 and 2010. Therefore, in pursuance of the aforesaid complaint made by the relative of the plaintiff-appellant, a letter dated 17.03.2021 was written to the aforesaid District Magistrate for effective Pairvi of the case in the case pending before the Sub Divisional Officer. It has also been disclosed by the defendant-respondent that the applicant no.3 Ifthar Ali alias Ikitiya Ali son of Munshi Akhtar Ali in the said suit has also died, therefore the suit was on

behalf of a dead person also. A perusal of the copy of the partition suit annexed as Annexure no.7 to the application indicates that it has been admitted in paragraph 2 of the application that the respondents no.1 and 2 i.e. the aforesaid two sisters of the plaintiff-appellant have 1/8 share each.

13. The application under Order 41 Rule 27 CPC has been contested by the plaintiff-appellant by filing an objection alleging therein that the defendant-respondent has failed to establish that the said evidence was not within his knowledge or could not be produced by him despite due diligence before the trial court because the alleged documents were in public domain and it cannot be said by defendant-respondent that they were not within their knowledge at the time when the suit was decreed. It has also been alleged that the averments of the defendant-respondent that 1/8 share each in plot no.1390-Ka vested in the Custodian, Enemy Property came to his knowledge on the complaint of Ehtesham Imtiyaz Ali is only a patch up work to fill the lacunae. It has also been alleged that the plea of non-joinder of necessary parties has already been dealt with by the trial court as well as by the first appellate court and decided against the defendant-respondent, therefore, now he cannot rake up the issue before this court because he has not filed any appeal challenging the same. The judgment in this Second Appeal is to be pronounced on the basis of issues involved in the appeal, on which two substantial questions of law have been formulated and the additional evidence sought to be brought on record does not have the direct and important bearing on the main issue in the suit and the application is liable to be dismissed. However no specific reply to the aforesaid pleas of the defendant-respondent in regard to settlement of the aforesaid two sisters

in Pakistan, their death and enemy properties etc. have not been given. 14. The reply to the objection has been filed. Thereafter a supplementary affidavit has been filed by the plaintiff-appellant annexing copy of the order dated 12.10.2022 passed by the Sub Divisional Officer, Hasanganj, Unnao, by means of which the suit filed by the plaintiff-appellant and others under Section 116 of the U.P. Revenue Code 2006 has been allowed to be withdrawn on an application moved by him on 21.09.2022.

15. The suit filed by the plaintiff-appellant was decreed by means of judgment and decree dated 30.04.2024. The appeal was allowed by the Lower Appellate Court by means of judgment and decree dated 26.02.2005. The documents annexed by the defendant-respondent alongwith his application under Order 41 Rule 27 CPC except annexures no.1 and 2, which are of subsequent date, could not have been in the knowledge of the defendant-respondent. So far as annexure No.2 is concerned, the date and time on it is 05.09.2022 at 11.30 A.M., which may be date of printing. The annexure no.1 is the Notification dated 12 September 1965 issued in General, which does not disclose the specific properties, therefore, the contention of learned counsel for the plaintiff-appellant that the defendant-respondent has failed to show the due diligence for obtaining the said documents is misconceived and not tenable.

16. Order 41 Rule 27 CPC provides for production of additional evidence in appellate court, which is extracted here-in-below:-

“27. Production of additional evidence in Appellate Court

(1) The parties to an appeal shall not be entitled to

produce additional evidence, whether oral or documentary, in the Appellate Court. But if--

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

1[(aa) 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, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

17. According to the aforesaid provision additional evidence can be filed in the appellate court in three contingencies. The first of which is that where the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted; secondly 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 be produced before passing of the decree and thirdly if the appellate court requires any

document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause. Therefore this court has to see as to whether the party seeking to produce additional evidence was diligent in producing the evidence or not or whether any document is required for pronouncement of judgment or for any other substantial cause the said evidence is required and there is sufficient cause for taking the additional evidence on record.

18. The Hon’ble Supreme Court, in the case of **North Eastern Railway Administration, Gorakhpur Versus Bhagwan Das (D) LRS; AIR 2008 Supreme Court 2139**, has held that in any event, had the court found the additional documents, sought to be admitted, necessary to pronounce the judgment in the appeal, in a more satisfactory manner, it would have allowed the application and, if not, the application would have been dismissed. It has also been observed that it is true that a judgment or decree by the first court or by the highest court obtained by playing fraud on the court is a nullity and non est in the eyes of law.

19. The Hon’ble Supreme Court, in the case of **Uttaradi Mutt Versus Raghavendra Swamy Mutt; (2018) 10 SCC 484**, provided the procedure to be followed by the appellate court after granting permission to produce the additional evidence is granted. There are two options available to the appellate court. First it may record the evidence itself by permitting the parties to produce evidence before it as per Rule 27 of Order 41 CPC or direct the court from whose decree the appeal under consideration has arisen, to do so.

20. The Hon’ble Supreme Court, in the case of **H.S.Goutham Versus Rama**

Murthy and another; (2021) 5 SCC 241, has held that unless and until the procedure under Order 41 Rule 27, 28 and 29 is followed, the parties to the appeal cannot be permitted to lead additional evidence and/or the appellate court is not justified to direct the court from whose decree the appeal is preferred or any other subordinate court, to take such evidence and to send it when taken to the appellate court.

21. The Hon'ble Supreme Court, in the case of **Satish Kumar Gupta and others Versus State of Haryana and others; (2017) 4 SCC 760**, has held that the additional evidence cannot be permitted to fill in the lacunae or to patch up the weak points in the case.

22. The Hon'ble Supreme Court, in the case of **Sanjay Kumar Singh Versus State of Jharkhand; (2022) 7 SCC 247**, has held that where the additional evidence is 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.

23. The Hon'ble Supreme Court, in the case of **A. Andisamy Chettiar Versus A.Subburaj Chettiar; (2015) 17 SCC 713**, has held that 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. It has further been observed that 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.

24. The Hon'ble Supreme Court, in the case of **Jagdish Prasad Patel (Dead) through legal representatives and another Versus Shivnath and others; (2019) 6 SCC 82**, has held that the application under Order 41 Rule 27 CPC for production of additional evidence, whether oral or documentary, cannot be allowed if the appellant was not diligent in producing the relevant documents in the lower court. However, in the interest of justice and when satisfactory reasons are given, the court can receive additional documents.

25. The Hon'ble Supreme Court, in the case of **Union of India Versus Ibrahim Uddin and another; (2012)8 SCC 148**, has held that 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. The Hon'ble Supreme Court has also held that the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. The words "for any other substantial cause" must be read with the word "requires" in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence. The relevant paragraphs 36, 38, 41, 48, 49 and 51 are extracted here-in-below:-

“ 36. The general principle is that the

appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. The appellate court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, the provision does not apply, when on the basis of the evidence on record, the appellate court can pronounce a satisfactory judgment. The matter is entirely within the discretion of the court and is to be used sparingly. Such a discretion is only a judicial discretion circumscribed by the limitation specified in the Rule itself. (Vide K. Venkataramiah v. A. Seetharama Reddy [AIR 1963 SC 1526] , Municipal Corpn. of Greater Bombay v. Lala Pancham [AIR 1965 SC 1008] , Soonda Ram v. Rameshwarlal [(1975) 3 SCC 698 : AIR 1975 SC 479] and Syed Abdul Khader v. Rami Reddy [(1979) 2 SCC 601 : AIR 1979 SC 553] .)

38. Under Order 41 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 [AIR 1965 SC 1008] .)

41. The words “for any other substantial cause” must be read with the word “requires” in the beginning of the 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.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such 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.

49. An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court. (Vide Arjan Singh v. Kartar Singh [1951 SCC 178 :

AIR 1951 SC 193] and Natha Singh v. Financial Commr., Taxation [(1976) 3 SCC 28 : AIR 1976 SC 1053] .)

51. In *Arjan Singh v. Kartar Singh* [1951 SCC 178 : AIR 1951 SC 193] this Court held : (AIR pp. 195-96, paras 7-8)

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

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

26. Similar view has been taken by the Hon’ble Supreme Court, in the case of **Nattha Singh and others Versus The Financial Commissioner, Taxation, Punjab and Others; (1976) 3 SCC 28** and

Coordinate Benches of this court in the cases of **Basant Kumar Mehrotra Versus Ram Laxman Janki Virajman Mandir; 2018 (36) LCD 1094** and **Jai Narain Pandey and after him Ram Bilas Pandey Versus Lallan Tiwari and others; 1972 SCC OnLine All 258.**

27. Adverting to the facts of the present case, this court finds that the plaintiff-appellant had filed a suit for permanent injunction on his behalf and on behalf of co-sharers and for their benefit also without disclosing that his two sisters, namely, Smt. Ajmat Ahsan and Kudrat Ahsan alias Nadrtula Momina, who were also co-sharers of 1/8th each, have migrated to Pakistan, settled there and adopted the citizenship of Pakistan. The reply to the application under Order 41 Rule 27 CPC also indicates that plaintiff-appellant has not stated that they have not left India for Pakistan and not become Pakistani citizens, whereas the documents sought to be placed on record by way of additional evidence indicates that they had went to Pakistan and became Pakistani citizens prior to 1966, when their shares had been declared enemy property and vested in Custodian, Enemy Properties of India and they died about 9-10 years back.

28. The evidence adduced by the plaintiff-appellant before the trial court also indicates that he has stated that they live in Lucknow, whereas their children are working in Bangladesh, therefore they used to go to Bangladesh, therefore not only there was concealment but the plaintiff-appellant also made false statement and mislead the court. The plea of the defendant-respondent is also that they have died about 9-10 years back and it has not been denied, therefore, it stands admitted. Even then he filed a suit for partition before

