Uttaradi Mutt vs Raghavendra Swamy Mutt on 26 September, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4796, 2018 (10) SCC 484, (2019) 142 REVDEC 736, (2018) 2 WLC(SC)CVL 638, AIR 2019 SC (CIV) 258, (2019) 1 MAD LW 487, (2018) 4 RECCIVR 723, (2019) 1 PAT LJR 40, (2018) 13 SCALE 538, (2018) 4 JLJR 422, (2018) 131 ALL LR 769, (2018) 5 CAL HN 35, (2018) 6 ANDHLD 102, (2018) 4 CURCC 260, (2018) 192 ALLINDCAS 163 (SC), (2018) 3 ALL RENTCAS 465, (2018) 3 GUJ LH 456, 2018 (4) AKR 733, AIRONLINE 2018 SC 1060

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Bench: D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9333 OF 2018
(Arising out of SLP(C) No.229 of 2018)

Uttaradi Mutt ….Appellant(s)

:Versus:

Raghavendra Swamy Mutt ....Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. This appeal arises from the judgment and decree dated 14th November, 2017 passed by the High Court of Karnataka at Bangalore in R.S.A. No.100446 of 2015, whereby the High Court was pleased to set aside the judgment and decree passed by the First Appellate Court and also that of the trial Court and relegated the parties before the trial Court, by allowing three applications filed by the respondent/defendant under Order XLI Rule 27 of the Civil Procedure Code, 1908 (for short, "CPC"). The High Court directed the trial Court to decide the suit afresh by giving its findings in

light of the additional evidence adduced. The operative part of the order passed by the High Court reads thus:

> "25. Therefore, this Court cannot decide the substantial questions of law on which the said present second appeal was admitted on 13.04.2016 at this stage and the matter deserves to go back to the trial Court by allowing the three applications filed under Order 41 Rule 27 of the CPC. All the three applications filed by the Defendant/Appellant-RSM under Order 41 Rule 27 of the CPC therefore, are allowed and setting aside the order dated 22.04.2015 passed by the FAC in its entirety, because even otherwise it appears to be self contradictory and vague partial injunction granted by FAC, the matter is restored back to the learned trial Court to allow the said additional evidences to be placed on record and allow the parties to prove and disprove the same in accordance with law and then re-decide the suit giving its findings in the light of such additional evidence.
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> In view of the long lapse of time, the trial Court is requested to expedite the matter and decide the suit again expeditiously.
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> The present appeal is accordingly disposed of. No costs. All I.As. are also disposed of."

2. The central issue in this appeal is whether the High Court was justified in allowing the three applications filed by the respondent/defendant under Order XLI Rule 27 before the First Appellate Court. Furthermore, even if there was just and sufficient reason for allowing the three applications, was the High Court justified in relegating the parties before the trial Court and directing the trial Court to re-decide the suit by giving its findings in light of the additional evidence?

3. This case has a chequered history. Shorn of unnecessary details we propose to refer only to the facts relevant to decide this appeal. In the first appeal filed by the appellant/plaintiff before the Principal Senior Civil Judge & Chief Judicial Magistrate, Dharwad bearing R.A. No.124 of 2014 (Original R.A. No.14 of 2011 before the Court of Senior Civil Judge, Gangawathi) against the dismissal of the suit by the Additional Civil Judge, Gangawathi vide judgment and decree dated 18th June, 2011 in O.S. No.74 of 2010 (Original O.S. No.193 of 1992), three applications under Order XLI Rule 27 for permission to produce additional evidence came to be filed by the respondent/defendant. The First Appellate Court considered the stated applications along with the first appeal preferred by the appellant/plaintiff. The First Appellate Court was pleased to dismiss the said applications preferred by the respondent/defendant; and allowed the appeal filed by the appellant/plaintiff on the basis of the evidence already brought on record before the trial Court. The suit filed by the appellant was decreed in part by the First Appellate Court. The operative order passed by the First Appellate Court dated 22nd April, 2015, reads thus:

> "ORDER The Application filed by the Appellant under Order 41 Rule 27 R/w Section 151 of the Code of Civil Procedure is dismissed.

The Application filed by the Appellant filed by the Appellant under Order 14 Rule 5 R/w Section 151 of the Code of Civil Procedure is dismissed.

The Application filed by the Respondent under Order 14 Rule 5 R/w Section 151 of the Code of Civil Procedure is dismissed.

The Applications filed by the Respondent under Order 41 Rule 27 R/w Section 151 of the Code of Civil Procedure are dismissed.

The Application filed by the Respondent under Section 151 of the Code of Civil Procedure seeking survey of Sy.No.192 of Anegundi Village is dismissed.

The Application filed by the Respondent under Section 340 of the Code of Criminal Procedure is dismissed. The Appeal filed by the Appellant under Order 41 Rule 1 of the Code of Civil Procedure is allowed in part. The Judgment and Decree dated 18-06-2011 passed by the Court of the Addl. Civil Judge, Gangavathi in O.S.No.74/2010 are set- aside.

The Suit of the Plaintiff is decreed in part. Subject to the right, if any, of the Defendant Mutt to perform Aradhanas and Poojas of the Vrindavanas in the Suit property, the Defendant is restrained by way of Perpetual Injunction from interfering with the Plaintiff Mutt's possession and enjoyment of the Suit property. It is hereby clarified that the above said raider shall not be construed as declaring the right of the Defendant Mutt to perform Aradhanas and Poojas.

Costs are made easy.

The Office is directed to transmit a copy of the Judgment and Decree to the trial Court along with LCR."

4. Aggrieved by the aforesaid decision, the respondent/defendant preferred a second appeal before the High Court, being R.S.A. No.100446 of 2015.

5. As aforesaid, for the nature of the order that we propose to pass and the issues to be answered in the present appeal, suffice it to observe that the second appeal, being R.S.A. No.100446 of 2015 filed by the respondent/defendant before the High Court of Karnataka at Bangalore, was finally decided vide impugned judgment dated 14th November, 2017. The High Court reversed the opinion of the First Appellate Court including the rejection of stated three applications filed by the respondent/defendant under Order XLI Rule 27 of CPC. The High Court instead allowed those applications and relegated the parties before the trial Court, as noted in the operative part of the impugned judgment extracted above.

6. As regards the first issue as to whether the High Court has recorded sufficient reasons for allowing the three applications for permission to produce additional evidence filed by the respondent/defendant under Order XLI Rule 27 of CPC before the First Appellate Court, the High Court has opined that the additional evidence sought to be brought on record, subject to proof, by

the respondent/defendant, definitely, could have a material bearing on the issues involved in the suit and determining the rights of the appellant/ plaintiff to claim injunction against the respondent/defendant on the basis of the total land being in their ownership or possession (whether it was 14 Acres 7 Guntas or 27 Acres 30 Guntas). The High Court was of the view that it could change the entire basis of the rights of the respective parties and therefore such additional evidence sought to be produced by the respondent/defendant ought not to be shut out. The High Court noted that the First Appellate Court delivered a contrived judgment without analysing such additional evidence and otherwise also, it was a substantial cause for reaching just conclusions and for correct evaluation of the rights of the respective parties, satisfying the parameters of Order XLI Rule 27 of CPC. To buttress this conclusion, the High Court relied on the dictum in paragraph 49 of the decision of this Court in Union of India Vs. Ibrahim Uddin and Anr.1. What essentially weighed with the High Court for showing indulgence to the respondent/defendant can be discerned from the observations in paragraph 17 of the impugned judgment which read thus:

> "17. Prima facie, this Court finds that the additional evidence mostly in the form of Government letters and Orders could have a major impact on the issues involved before the Courts below and therefore deserved to be considered by the Court after being led and proved in accordance with law by concerned party. Merely because the order dated 07.09.1974 passed by Superintendent of Land Records became the subject matter of order by the KAT and even this Court, it does not prevent the trial Court or the FAC to allow such additional evidence taken on record and allow it to be proved in accordance with law and then consider and weigh such evidence and then decide the issues in accordance with law. Most of these documents were Government communication and Orders and were not in the control and possession of the defendant-RSM and defendant-RSM being not a party before KAT in the appeal filed by Vyasraja Mutt, the FAC should have allowed these Additional evidence which could have helped it in completing the quest for truth and meet the ends of justice and deliver a correct judgment. The failure to do so has resulted in serious miscarriage of justice. Without the title and peaceful possession of the entire land of 27 Acres and 30 Guntas proved by the plaintiff/respondent-UM, in the face of such contradicting Additional Evidence, the self contradictory and vague injunction granted by FAC cannot be sustained." For that reason, the High Court reversed the view taken by the First Appellate Court on the three applications preferred by the respondent/defendant under Order XLI Rule 27 of CPC 1 (2012) 8 SCC 148 and deemed it appropriate to relegate the parties to the trial Court.

7. According to the appellant, the High Court ought not to have interfered with the discretion exercised by the First Appellate Court in dismissing the three applications for permission to produce additional evidence preferred by the respondent/defendant. Furthermore, the reasons weighed with the High Court, in no case, satisfied the test for production of additional evidence predicated in Order XLI Rule 27 of CPC.

8. This objection need not detain us as we are of the considered opinion that the First Appellate Court would have been within its jurisdiction to permit the party to the proceedings to produce

additional evidence before it for full, complete and effectual adjudication of the proceedings. The purport of Order XLI Rule 27 of CPC has been considered by this Court in Union of India (supra). The Court adverted to the exposition made in earlier decisions of the Court from paragraphs 36 to 46 and summed up the proposition in paragraphs 47 and 48 as under:

> "47. 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.
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> 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."

9. In the present case, the High Court has opined that the documents proposed to be produced by the respondent/defendant were official records and public documents which, if proved, could enable the Appellate Court to pronounce the judgment and do full, complete and effectual justice to the parties. In other words, the proposed additional evidence was required by the Court to answer the subject matter and in particular, to pronounce the judgment on material issues.

10. In paragraphs 49-52 of the same reported decision of Union of India (supra), the Court dealt with the question of stage of consideration of applications under Order XLI Rule 27 of CPC, in reference to earlier decisions of this Court. Be that as it may, on analysing the reasons recorded by the First Appellate Court for rejecting the three applications filed by the respondent/defendant under Order XLI Rule 27 of CPC and juxtaposing the same with the reasons recorded by the High Court for allowing those applications, in our opinion, the conclusion reached by the High Court on this count is impregnable.

11. That takes us to the second contention raised by the appellant that even if there was sufficient ground for allowing the stated applications filed by the respondent/defendant for production of additional evidence, the genuineness and the contents of the additional documents would have to be proved by the party placing reliance thereon. As regards this plea, we find that the High Court has made it amply clear that the fact that the applications are allowed per se is not to give any direction

to straightaway exhibit the additional documents, but that it could be exhibited subject to proof. The High Court has unambiguously observed that the documents will have to be proved in accordance with law. We make it amply clear that by allowing the three applications filed by the respondent/defendant under Order XLI Rule 27 of CPC, it would not follow that the additional documents/additional evidence can be straightaway exhibited rather, the respondent would have to not only prove the existence, authenticity and genuineness of the said documents but also the contents thereof, as may be required by law.

12. The further grievance of the appellant, however, is that the High Court, in any case, ought not to have relegated the parties before the trial Court with a direction to the trial Court to re-decide the suit. The respondent, however, would rely on the provisions of the amended Rule 23 of the CPC "as applicable to the State of Karnataka". The same reads thus:

> "23. Remand of case by Appellate Court:- "Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, or where the Appellate Court in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and whether any further evidence shall or shall not be taken after remand, and shall send a copy of its judgment or order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; the evidence, if any, recorded during the original trial shall subject to all just exceptions, be evidence during the trial after remand." (emphasis supplied)

13. Indeed, the provision as applicable to the State of Karnataka is not limited to the decree disposing of the suit on a preliminary point but also where the Appellate Court in reversing or setting aside the decree under appeal, considers it necessary, in the interest of justice, to remand the case. Notably, the Karnataka amendment has been introduced vide the Karnataka Gazette entry dated 5th November, 1959. The effect of that provision is reinforced by Central Amendment Act 104 of 1976 which introduced Rule 23-A. The said Rule 23-A reads thus:

> "23-A. Remand in other cases.- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under
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> rule 23."
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> 14. We say so because under Rule 23 of CPC, the Appellate Court could remand the case before it where the Court from whose decree an appeal was preferred, had disposed of the suit upon a preliminary point and that decree was reversed in appeal. Rule 23-A deals with other (residuary) category of cases to be remanded by the

Appellate Court in an appeal against a decree which has been disposed of otherwise than on a preliminary point. While exercising such discretion, the Appellate Court is duty bound to keep in mind Rules 25 and 26 of Order XLI of the CPC, which read thus:

"25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.- Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred and in such case shall direct such Court to take the additional evidence required;

And such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor [within such time as may be fixed by the Appellate Court or extended by it from time to time]." "26. findings and evidence to be put on record – Objections to finding- (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

(2) Determination of appeal.- After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to determine the appeal."

15. In other words, 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 XLI or direct the Court from whose decree the appeal under consideration has arisen, to do so.

16. The appellants have placed reliance on H.P. Vedavyasachar Vs. Shivashankara and Anr.2, which has also considered the decision in Shanti Devi Vs. Daropti Devi3. In the case of H.P. Vedavyasachar (supra), it was 2 (2009) 8 SCC 231 3 (2006) 13 SCC 775 specifically contended that no case was made out to adduce additional evidence and in that event, the entire case could not have been remanded to the trial Court for fresh disposal after recording fresh evidence as it was not a case envisaged under Order XLI Rule 23 of CPC. This contention has been considered in paragraphs 7 to 10 of the said decision, in the following words:

"7. However, so far as the second contention raised by the learned counsel for the appellant is concerned, in our opinion, the same has substance. When an application for adducing additional evidence is allowed the appellate court has two options open to it. It may record the evidence itself or it may direct the trial court to do so.

8. Order 41 Rule 28 CPC reads as under:

> "28. Mode of taking additional evidence.—Wherever additional evidence is allowed to be produced, the appellate court may either take such evidence, or 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." For the aforementioned purpose, in our considered opinion, the High Court could not have directed the trial court to dispose of the suit after taking evidence. Such an order of remand could be only in terms of Order 41 Rule 23, Order 41 Rule 23-A or Order 41 Rule 25 of the Code. None of the said provisions have any application in the instant case.
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> 9. This Court in Shanti Devi v. Daropti Devi1 has held as under: (SCC p. 778, para 13) "13. But the same by itself could not be a ground for remitting the entire suit to the learned trial Judge upon setting aside the decree of the learned trial court. The power of remand vests in the appellate court either in terms of Order 41 Rules 23 and 23-A or Order 41 Rule 25 of the Code of Civil Procedure. Issue 4 was held to have been wrongly framed. Onus of proof was also wrongly placed and only in that view of the matter the High Court thought it fit to remit it to the learned trial Judge permitting the parties to adduce fresh evidence. It, therefore, required the learned trial Judge to determine a question of fact, which according to it was essential, upon reframing the issue."
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> 10. None of the aforementioned provisions were available to the High Court. We, therefore, in modification of the order passed by the High Court direct as under:
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> (i) The learned trial court upon recording the evidence as directed by the High Court shall transmit the records to the first appellate court with a copy of its report annexed thereto.
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> (ii) Such an exercise by the learned trial court must be completed within a period of four weeks from the date of communication of this order.
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> (iii) The first appellate court must dispose of the first appeal on receipt of the said order as also the evidence as adduced as expeditiously as possible and not later than eight weeks from the date of receipt of the said report.

We are passing the order keeping in view the fact that the appellant is said to have been dispossessed as far back as in 1993." (emphasis supplied)

17. In the present case, the High Court has not recorded any special reasons as to why the parties should be relegated before the "trial Court" to re-decide the suit. The only reason, which, presumably, weighed with the High Court, is that it was necessary to find out the truth, as it is the duty of the Court. That could be done even by directing the First Appellate Court to record evidence, which it was competent to do while hearing the first appeal, had it allowed the applications under Order XLI Rule 27 of CPC by the respondent/defendant. For that, as per Rule 25 of Order XLI of the

CPC, the High Court could have framed the issues and referred them for adjudication before the First Appellate Court, against whose decree the second appeal was preferred before the High Court. It may be useful to advert to Rules 28 & 29 of Order XLI of C.P.C. The same read thus:

> "28. Mode of taking additional evidence.- Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or 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." "29. Points to be defined and recorded.- Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified." The High Court could have issued directions to the First Appellate Court to determine any question of fact including the existence and genuineness of the additional evidence or for that matter, whether the contents of the said documents had been duly proved by the party relying thereon. After recording the evidence in support of such relevant matters as the High Court may have directed, the First Appellate Court could proceed to try such issues and return the evidence to the High Court together with its findings thereon within the prescribed time. Such a course was permissible in terms of Rule 28 of Order XLI of CPC. And on receipt of the report, the High Court could then consider the substantial questions of law already framed while admitting the second appeal and finally decide the same on all issues.

18. Considering the chequered history of this litigation and the fact that the suit was filed in the year 1992, and that the writ petition against the order passed by the Superintendent of Land Records is stated to be pending before the High Court, it would be appropriate that the High Court frames the points on which additional evidence could be adduced by the respondent/defendant and call upon the First Appellate Court to record additional evidence and also consider the question of genuineness and authenticity of the additional evidence, including as to whether the contents thereof have been proved by the party relying thereon, and thereafter, to return the evidence to the High Court together with its findings thereon and reasons thereof within the prescribed time. Such a course would meet the ends of justice.

19. Accordingly, we set aside the impugned judgment and order of the of the High Court in part, to the extent that it has relegated the parties before the trial Court for re-deciding the suit after allowing the respondent/defendant to produce additional evidence in accordance with law. Instead, the appeal is restored to the file of the High Court to its original number. The High Court shall frame points on which the additional evidence is allowed to be produced and direct the First Appellate Court to take the additional evidence on record in accordance with law and then return the evidence to the High Court together with its findings thereon and the reasons thereof, within the prescribed time. Such directions be issued by the High Court expeditiously, preferably within two months from today. On receipt of the said report from the First Appellate Court, the High Court may then consider the Second Appeal on the substantial questions of law already framed or such other substantial questions of law that may arise for its consideration.

20. The appeal and the accompanying application are disposed of in the aforementioned terms with no order as to costs.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) .....J. (Dr. D.Y. Chandrachud) New Delhi;

September 26, 2018.