IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CMPMO No. 599 of 2025
Reserved on : 30.6.2026
Decided on: 21.7.2026
Uploaded on:21.7.2026

Dina Nath

... Petitioner

Versus

Amin Chand

...Respondent

Coram
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting? yes

For the Petitioner: Mr. B.S. Chauhan, Senior Advocate, assisted by Ms. Aditi Rana, Advocate.

For the Respondents *:* Mr. Lovneesh Kanwar, Senior Advocate, assisted by Mr. Tarun Garla, Advocate.

Virender Singh, Judge

Petitioner has filed the present petition, under Article 227 of the Constitution of India, against the order dated 8.9.2025, passed by the learned Additional District Judge, Hamirpur, H.P. (hereinafter referred to as 'the First Appellate Court'), in CMA No. 655 of 2019, filed in Civil Appeal No. 62 of 2019, titled as, 'Dina Nath versus Amin Chand'.

2. The said appeal has been preferred by the petitioner, against the judgment and decree, dated 30.3.2019, passed by the Court of learned Senior Civil Judge, Hamirpur, District Hamirpur, H.P. (hereinafter referred to as 'the trial Court'), in Civil Suit No. 95/2013, RBT No. 85/2019, titled as, 'Amin Chand versus Dina Nath'.

3. Parties to the lis are referred to, in the same manner, in which, they were referred to by the learned First Appellate Court.

4. Facts in brief, leading to filing of the present petition, may be summed up as under:

By way of judgment and decree, dated 30.3.2019, the learned trial Court has decreed the suit for possession, filed by respondent Amin Chand. Aggrieved by the said judgment and decree, appellant Dina Nath filed an appeal before the learned First Appellate Court.

4.1 During the pendency of the said appeal, before the learned First Appellate Court, application under Order 41 Rule 27 CPC has been moved, which has been

registered as CMA No. 655 of 2019. The said application has been filed, on the ground, that applicant/appellant Dina Nath is adjoining owner of Khasra Nos. 6407 and 6408, measuring 2 kanal 6 marlas, adjoining to khasra No. 6406. He had applied for demarcation of his own land, upon which, demarcation was conducted on 8.6.2019, in the presence of parties, whereas, the respondent had filed suit, in respect of khasra No. 6406 and decree has been passed by the learned trial Court, for possession, as per Tatima Ext. OW1/D, by way of demolition of structure. In the said demarcation, it has been found that there is no encroachment over the land in dispute, for which, the decree has been passed and that the structure is part and parcel of khasra No. 6407.

4.2 It is the further case of the applicant that the said document came into existence subsequently, after the decision of the case, as such, the said document is necessary for the adjudication of the controversy, involved in the present appeal.

5. On the basis of above facts, a prayer has been made to allow the application, filed under Order 41 Rule 27 CPC.

6. When, put to notice, the application has been contested by respondent Amin Chand, by taking preliminary objections that the application is not maintainable; demarcation has already been conducted by the Local Commissioner (Revenue expert) and the encroachment was found. Thereafter, the said report was confirmed by the learned trial Court and decree for possession has been passed; the applicant is estopped from filing the application, on account of his acts and conduct; demarcation report has not been confirmed by the revenue authorities and the said document has no relevance. It has been admitted that the applicant is owner of the adjoining property, however, demarcation report, dated 8.1.2019 has yet not been confirmed.

7. According to the non-applicant/respondent, no demarcation has been conducted on 8.6.2019, as alleged; the document sought to be produced, is stated to have no relevance, for the adjudication of the appeal.

8. As such, a prayer has been made to dismiss the application.

9. The learned First Appellate Court, vide order dated 8.9.2025, has dismissed the aforesaid application. Against the dismissal of the application, the present petition has been filed, mainly on the ground that application, under consideration, has wrongly been dismissed by the learned First Appellate Court. The application under Order 41 Rule 27 CPC should have been allowed by the learned First Appellate Court, as the document, so relied upon, in the said application, would be necessary for the just adjudication of the case.

10. In addition to this, it has been argued that the learned First Appellate Court has wrongly dismissed the application, prior to the adjudication of the appeal, and the same is required to be adjudicated, alongwith the main appeal.

11. On the basis of above facts, Mr.B.S. Chauhan, Senior Advocate, assisted by Ms.Aditi Rana, Advocate, has prayed that the petition may kindly be allowed by setting aside the order, passed by the learned First

Appellate Court, and the application under Order 41 Rule 27 CPC, may kindly be allowed, as prayed for.

12. Per contra, Mr. Lovneesh Kanwar, Senior Advocate, assisted by Mr. Tarun Garla, learned counsel for the respondent has opposed the prayer, so made by the learned Senior Counsel, appearing for the petitioner, on the ground that the application under Order 41 Rule 27 CPC has rightly been dismissed by the learned First Appellate Court, on the ground, that the document sought to be produced, has got no relevance with the adjudication of the case. In addition to this, it has been argued by learned senior counsel for the respondent that it is not necessary for the learned trial Court to decide the application, alongwith the main appeal, as relevance of the document, has rightly been considered by the learned First Appellate Court.

13. In order to buttress his contentions, learned Senior Advocate, appearing for the respondent, has relied upon the decision of Hon'ble Supreme Court in **Atlanta Infrastructure Limited vs. Delta Marine Company**

& others, reported in (2021) 20 Supreme Court Cases 593.

14. Hence, a prayer has been made to dismiss the application.

15. Admittedly, the appeal preferred by the appellant is pending adjudication, before the learned First Appellate Court. The provisions of Order 41Rule 27 CPC are reproduced as under:

> *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*
> ***(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.*

16. By way of application, which has been dismissed by the learned First Appellate Court, the petitioner wants to produce the copy of the demarcation report, dated 8.6.2019, statement of the parties, copy of Aksh Musabi, so that the matter could be decided effectively by the learned First Appellate Court.

17. First of all, coming to the case law, relied upon by the learned Senior Counsel for the respondent with regard to the fact that it is not necessary that the application under Order 41 Rule 27 CPC should be decided alongwith the main appeal, with due respect to the law laid down by the Hon'ble Supreme Court, the same is not applicable to the facts and circumstances of the case, as the controversy before the Hon'ble Supreme Court, in **Atlanta Infrastructure**'s case (supra) was with regard to encashment of the bank guarantee, whereas the application under Order 41 Rule 27 CPC, in the present case, has been filed to prove the demarcation, which according to the appellant-applicant, was conducted in the presence of parties. As such, no benefit could be derived by respondent Amin Chand from the

decision of Hon'ble Supreme Court in **Atlanta Infrastructure**'s case (supra), as referred to above.

18. The decree has been passed in the present case on 30.3.2019, which has been assailed before the learned First Appellate Court, whereas, the demarcation was conducted on 8.6.2019, after the decision of the Civil Suit by the learned trial Court.

19. In this case, as stated above, application under Order 41 Rule 27 CPC has been decided by the learned First Appellate Court without deciding the appeal. If the facts and circumstances of the present case are seen in the light of the decision of Hon'ble Supreme Court in **State of Rajasthan versus T.N. Sahani & others,** (2001) 10 SCC 619, then, on technical grounds, order passed by the learned trial Court does not stand in the judicial scrutiny. Relevant paragraph-4 of the judgment is reproduced as under:

> *"4. It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy. AIR 1963 SC 1526, pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable*

it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner. This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the document and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law."

20. Similar view has again been taken by the Hon'ble Supreme Court in **Eastern Equipment & Sales Limited Versus Ing. Yash Kumar Khanna,** (2008) 12 SCC 739. Relevant paragraphs 5 to 7, of the judgment, are reproduced, as under:-

"5. We have heard learned counsel for the parties and after considering the facts and circumstances of the present

case, we are of the view that in order to decide the pending appeal in which the application under Order 41 Rule 27 of the Code of Civil Procedure was filed ought to have been taken by the appellate court along with the application for acceptance of additional evidence under Order 41 Rule 27 of the Code of Civil Procedure.

6. In that view of the matter and without going into the merits as to whether the application under Order 41 Rule 27 of the Code of Civil Procedure was rightly rejected by the appellate court as well as by the High Court, we set aside the order of the High Court as well as of the appellate court rejecting the application under Order 41 Rule 27 of the Code of Civil Procedure and we direct that the appellate court shall decide the pending appeal along with the application under Order 41 Rule 27 of the Code of Civil Procedure on merits within a period of three months from the date of supply of a copy of this order to the appellate court. The appeal is allowed to the extent indicated above. There will be no order as to costs.

7. The view that we have expressed can be supported by a decision of this Court in Jaipur Development Authority v. Kailashwati Devi, (1997) 7 SCC 297."

21. In view of the above, the order dated 8.9.2025, does not stand in the judicial scrutiny, by this Court, on the above technical grounds. As such, the present petition is allowed and order dated 8.9.2025, passed in application under Order 41 Rule 27 CPC is set aside and the application is ordered to be revived to its original number.

22. The learned First Appellate Court is requested to decide the application, alongwith the main appeal.

23. In view of above, the present petition is disposed of.

23. Any of the observations, made herein above, shall not be taken as an expression of opinion, on the merits of the case pending adjudication before the learned First Appellate Court, as these observations, are confined, only, to the disposal of the present petition.

23. The pending application(s), if any, are also disposed of.

24. Record be sent back.

(Virender Singh)
Judge

21.7.2026
Kalpana