

A GOVT. OF KARNATAKA AND ANR

v.

K.C.SUBRAMANYA AND ORS  
(Civil Appeal No 10195 of 2013)

B SEPTEMBER 16, 2013

[GYAN SUDHA MISRA AND  
PINAKI CHANDRA GHOSE, JJ.]

C *Code of Civil Procedure, 1908 – Or.XLI, r.27(1)(aa) –*  
D *Conditions precedent before allowing a party to adduce*  
E *additional evidence at the stage of appeal – Held: A party can*  
seek liberty to produce additional evidence at the appellate  
stage, but the same can be permitted only if the evidence  
sought to be produced could not be produced at the stage of  
trial in spite of exercise of due diligence and that the evidence  
could not be produced as it was not within knowledge of the  
party and hence was fit to be produced by the appellant before  
the appellate forum – In the instant matter, the appellants are  
a public authority and sought to produce a road map which,  
it is unbelievable, was not within their knowledge indicating a  
road to the disputed land – Therefore, rejection of the  
application of the appellants to rely on the said map rightly  
not entertained at the stage of first appeal.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
10195 of 2013.

From the Judgment & Order dated 26.07.2011 of the High  
Court of Karnataka at Bangalore in RFA No. 1765 of 2005.

G V.N. Raghupathy, S.N. Bhat, Dharam Bir Raj Vohra, G.V.  
Chandrashekar, N.K. Verma, Anajana Chandrashekar, Girish  
Ananthamurthy, Vijayanthi Girish for the appearing parties.

The following order of the Court was delivered

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**ORDER**

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1. Leave granted.

2. Application for impleadment is allowed.

3. Having gone through the impugned judgment and order dated 26.07.2011 passed by the High Court of Karnataka in RFA No. 1765/2005, we have noticed that the judgment and decree was passed in favour of the respondents by the Trial Court which had also been upheld by the High Court.

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4. However, counsel for the appellants submitted that the appellants have sought permission of the High Court at the stage of first appeal seeking liberty to adduce additional evidence which is a map of the area indicating that the disputed land is a public road and in view of Order XLI Rule 27(1) (aa), the appellants were entitled to adduce such additional evidence at the appellate stage.

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D

5. However, we do not feel impressed with this argument and deem it fit to reject it in view of Order XLI Rule 27(1) (aa) which clearly states as follows:

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(a) .....

(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

F

(b) .....

G

6. On perusal of this provision, it is unambiguously clear that the party can seek liberty to produce additional evidence at the appellate stage, but the same can be permitted only if the evidence sought to be produced could not be produced at

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A the stage of trial in spite of exercise of due diligence and that the evidence could not be produced as it was not within his knowledge and hence was fit to be produced by the appellant before the appellate forum.

B 7. It is thus clear that there are conditions precedent before allowing a party to adduce additional evidence at the stage of appeal, which specifically incorporates conditions to the effect that the party in spite of due diligence could not produce the evidence and the same cannot be allowed to be done at his leisure or sweet will.

C 8. In the instant matter, the appellants are a public authority and has sought to produce a road map which, it is unbelievable, was not within the knowledge of the appellants indicating a road to the disputed land. Therefore, the rejection of the application of the appellants to rely on the said map has rightly not been entertained at the stage of first appeal. The impugned order thus do not suffer from legal infirmity so as to interfere with the same.

E 9. However, we deem it appropriate to observe further that the appellants are Government of Karnataka and, therefore, if it is of the view that the land in question requires construction of a public road, no one can stop it from acquiring the land in question. In fact, the appellants appear to have taken steps earlier for acquisition of the land in question but what prevailed upon the appellants to drop the acquisition proceeding is not quite clear.

G 10. The present appeal arises out of a simple suit of declaration and confirmation of possession which was decreed in favour of the respondents and was upheld by the High Court. The decree having been passed after contest, cannot be interfered with unless the counsel could prove perversity in the finding recorded concurrently by the courts below. It is clear that the appellants have miserably failed to do so and, therefore, it cannot bank upon the equity and good conscience of this Court

beseeking interference with a contested decree passed in favour of the respondents. A

11. It is no doubt true that the courts at times can exercise its due diligence for taking the relevant aspects of the matter while exercising its discretion for application of equity and good conscience. But, insofar as the appellants in this appeal are concerned, that also is lacking as we fail to comprehend as to why the appellants dropped the acquisition proceeding if it thought that the land in question was so essential and viable for using it as a public road. B

12. However, in spite of the aforesaid observations, the appellants obviously would be free to take recourse to any provision in accordance with law to declare the land in question as a public land of the appellant but insofar as this appeal is concerned, we cannot entertain it as we are not convinced that it is a fit case where we should interfere with the decree based on concurrent findings of fact recorded by the courts below. C D

13. The appeal, therefore, is dismissed.

B.B.B.

Appeal dismissed.