

(2006) 12 MP CK 0027
In the Madhya Pradesh High Court
Case No : F.A. No. 440 of 2002

Krishna Kumar Sahu

APPELLANT

Vs

Narbada Prasad Sahu

RESPONDENT

Date of Decision : 05-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2007) 1 MPLJ 523

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : K.P. Mishra, with Amresh Mishra, for the Appellant; Ashok Lalwani, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

This appeal has been preferred by the Defendant calling in question legality of judgment and decree dated 16-9-2002 passed by 18th Additional District Judge, Fast Track Court, Jabalpur in Civil Suit No. 25-A/2002.

The Plaintiff; Narbada Prasad Sahu, father of Defendant; Krishna Kumar Sahu filed suit on 19-12-1994 for declaration that the house at plot No. 129 in scheme No. 6 situated at Sanjeevani Nagar, Garha, Jabalpur is the property of Plaintiff and Defendant is the Benamidar. The Defendant be restrained from interfering with the possession of the Plaintiff and from selling the suit property to anybody. Plaintiff has averred that the Defendant is the youngest son of the Plaintiff. Plaintiff has four sons and daughters. Plaintiff is in possession of ancestral property as KARTA. Jabalpur being the education center, Plaintiff intended to have house at Jabalpur, for that the Plaintiff had negotiated and purchased plot No. 129 from JDA. As the Plaintiff was living out on account of service, he thought it proper to obtain plot from JDA in the name of his son; Krishna Kumar Sahu the Defendant. The amount for acquiring the plot was spent by the Plaintiff.

He constructed the house after obtaining sanction from JDA and spent most of his service earning. House was completed in the year 1987. His eldest son; Santosh Sahu shifted in the portion of the house in November, 1987, other two portions were let out by him to tenants. One of the tenant Shri Vishwakarma vacated in August, 1990, another tenant Ghanshyam Kashyep vacated in March, 1992. The property is a common hotch-potch property for the benefit of his sons after him. Ultimately a settlement was reached between the parties relating to property at Mandla for the purpose of payment of municipal taxes, the Defendant had agreed that the disputed house was the property of Plaintiff and his wife. Thus, the Defendant was estopped to contend contrary.

Defendant in the written statement contended that it was not ancestral property. There was no joint Hindu family. Property situated at Mandla was the joint property. Plot was obtained on lease by the Defendant. He spent money out of his own savings and paid the amount of JDA. The rent used to be realized and utilized by the Plaintiff in lieu of the loan amount which he had spent for construction. Amount was lent by the Plaintiff as a loan. Settlement-deed dated 11-11-1988 was not admissible in evidence. It was not properly stamped. The disputed property belongs to him. When the Plaintiff wanted to obtain mutation, an objection was raised by the Defendant. Consequently, it was not allowed by the JDA, he was not Benamidar his Affidavit dated 6-11-1994 was of no value. It was not on proper stamp. Plaintiff was not entitled to take plea of Benamidar in view of Benami Transaction Prohibition Act, 1988. Plaintiff joined the service at Jabalpur in September, 1975 as Lab. Assistant. He saved the amount out of his earning and made the payment of Rs. 1500/- to Town Improvement Trust on 9-7-1976 and applied for facility of instalment for payment of remaining amount. In the construction the Defendant has spent the amount out of his own earning. Sum of Rs. 80,100/- was obtained as loan from Plaintiff. Out of rent and his earning amount has been repaid to the Plaintiff. Plaintiff had permitted his brother Santosh Sahu to live as a licensee in 3 rooms. In remaining rooms tenants used to reside.

Suit has been decreed. The Plaintiff has been declared to be owner. Defendant has been restrained from interfering with the possession of the Plaintiff and from selling the property. The Plaintiff has examined as many as 7 witnesses. The Defendant examined himself and one more witness in support of his case. Both the parties adduced documentary evidence also. The trial Court on evaluation of evidence has come to the finding that the Defendant is Benamidar. Money has not been spent by the Defendant in obtaining the plot from JDA. Defendant was trying to evict his brother Santosh in unlawful manner. The admission in the settlement deed dated 11-11-1988 executed by the Defendant has not been found to be established.

Shri K.P. Mishra, learned Senior Counsel appearing on behalf of the Appellant has submitted that burden of proof that the Defendant was Benamidar was on the Plaintiff. He has submitted that most of the documents, lease-deed etc. have

been produced by the Defendant. He was in service and had paid the amount to the JDA for obtaining the lease-hold rights over the disputed plot. The total sum payable was Rs. 6,000/- , initial amount of Rs. 1500/- was paid on 23-6-1978 as apparent from P/51A as he had no capacity to pay the amount at once. He prayed for facility of instalment of Rs. 200/- that was granted. Thereafter the payment was made in instalment of Rs. 200/- as apparent from receipt. Thus, the money was spent by Defendant out of his own pocket for the purpose of obtaining the lease. The documents relating to dispatch of material from Mandla to Jabalpur were also in the name of Defendant; Krishna Kumar. Krishna Kumar was in occupation of Government accommodation that is why he allowed his brother Santosh to occupy the portion of the property and father was allowed to realize the rent from tenant in order to satisfy the loan of approximately Rs. 80,000/- given by him to the Defendant. That amount has been repaid as suggested by the Defendant (DW-1) Krishna Kumar in his deposition. He has further submitted that very strong piece of evidence was required once the property was acquired independently by the Defendant to prove that it was put in hotch potch. No such evidence was adduced. He has relied upon certain passages of Mulla Hindu Law and J. Duncan M. Derrett's Essays in Classical and Modern Hindu Law as to family arrangements in developing country. He has submitted on the strength of an order (P/31) the family arrangement was entered into with respect to Mandla property. There was no reference in the family settlement as to Jabalpur property. Absence of the mention of property at Jabalpur in the family settlement goes to show that it was independent property of Defendant, hence, was not subjected to family settlement entered into between the parties in the year 1988. He has further submitted that in municipal record, water supply department and MPEB everywhere the name of Krishna Kumar was recorded as owner. He paid these taxes. Receipts are in his name, as such the finding recorded by the trial Court that the Plaintiff was Benamidar could not be allowed to sustain. He has also submitted that Plaintiff (PW-1) Narbada Prasad has stated that he did not deposit the amount through Defendant put the receipts shows the name of Krishna Kumar. He has also pressed application filed under Order 41, Rule 27, CPC and submitted that the documents filed indicate withdrawals made by Defendant to repay loan, correctness of these documents cannot be doubted. Amount of loan has been repaid to Plaintiff by obtaining the withdrawals out of the co-operative society and GPF, as such in the interest of justice the documents be taken on record by allowing the application. He has relied upon various decisions to be referred later.

Shri Ashok Lalwani, Learned Counsel appearing on behalf of the Plaintiff/ Respondent has submitted that various correspondence on record admittedly written by the Defendant goes to show that even at the time of obtaining the lease the money was spent by the Plaintiff. The salary of Defendant was approximately Rs. 300/- . He was receiving in hand after deduction of the amount of GPF, paltry sum of Rs. 217/- per month, he rendered the service at Jabalpur. Defendant had no arrangement/source of money. Money in construction

of the house was spent by the Plaintiff as admitted by the Defendant himself. It was not a case of the loan given to the Defendant. Enjoyment of property, and induction of tenant by the Plaintiff, realization of rent goes to establish that the Defendant was Benamidar of the property in question. Ex. P/31 is an order not the deed of settlement. He has further submitted that in fact in the deed of settlement there was reference as to property at Jabalpur. It was admitted to be the property of the Plaintiff and his wife. He has relied upon an affidavit (P/32) executed by the Defendant in which an admission was made that the property belongs to Plaintiff and he has spent money in construction. Burden of proving that the Defendant was Benamidar has been successfully discharged, even otherwise burden of proof loses significance when both the parties have adduced the evidence. The findings recorded by the trial Court are based on admission made by the Defendant himself in his deposition. There is overwhelming evidence adduced by the Plaintiff in the form of the Mason who constructed the property, an electrician, a neighbour, wife of Santosh Sahu and Santosh Sahu has also stated that the money was spent while obtaining the lease by the Plaintiff. Thus, the findings of fact recorded are reasonable. No case for interference in the appeal is made out.

Central question for consideration is whether the Defendant can be said to be Benamidar? Before dilating upon the facts of the case, I deem it appropriate to refer various decision cited at bar.

In *Gangadara Ayyar and Ors. v. Subramania Sastrigal and Ors.*, AIR 1949 36 FC 88 it was held that the onus of establishing the transaction is Benami is on the person asserting Benami nature of the transaction and it must be strictly made out. The decision of the Court cannot rest on mere suspicion but must rest on legal grounds and legal testimony. In the absence of evidence the apparent title must prevail. The real test is source of consideration, when no conclusive evidence to prove source case to be dealt with on reasonable probabilities and legal interference arising from proved facts.

In *Jaydayal Poddar (Deceased) through L.Rs. and Another Vs. Mst. Bibi Hazra and Others*, the Apex Court has laid down that whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formula or acid test, uniformly applicable in all situations, can be laid down, yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances; (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale. The source whence the purchase money came, is by, far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

In His Highness Maharaja Pratap Singh Vs. Her Highness Maharani Sarojini Devi and Others, the Apex Court has referred to aforesaid tests and the Mayne's Hindu Law in which the aforesaid tests have been reiterated. The decision in Jaydayal Poddar v. Bibi Hazra (supra) has been relied upon.

When we come to evidence in this case, Narbada Prasad Sahu (PW-1) has stated that he went to office of JDA for obtaining the plot No. 129 in scheme No. 6. The Defendant obtained the training of Lab Technician in the year 1974. He paid Rs. 1500/- to be deposited in JDA in June, 1976. Defendant had no arrangement to make payment of money. He had made the payment of instalment amount to the JDA. Shri Omchand Sahu used to deposit the money. Defendant used to write letters to Plaintiff seeking instruction in order to deposit the amount of instalments. As per his direction the amount used to be deposited. Defendant informed as per letter (P/2) that the instalments were over. The Plaintiff was required to visit Jabalpur for obtaining execution of the lease-deed. In 1982 foundation was constructed. Letters (P/3 and P/4) were also written by Defendant. Receipts (P/5 to P/8) of deposit of the amount with JDA have been produced by the Plaintiff. Vouchers (P/9 to P/21) of purchase of materials for construction of the house have also been produced by the Plaintiff, relating to purchase of iron, wood etc. As per order (P/25) water connection was obtained, payment of water tax was made as per receipt (P/26) of Rs. 29/- . A family settlement was reached, in that, it was admitted that the property at Jabalpur had to remain with the Plaintiff and his wife. The house at Jabalpur was constructed for the purpose of use by the entire family. An objection was raised on behalf of the Defendant about the admissibility of settlement deed dated 11-11-1988. It appears that ultimately it was not allowed to be tendered in evidence. He has further stated that construction of the house was completed upto Dipawali 1987. His elder son Santosh started living in portion of the house. Hari Shanker Dubey was inducted as a tenant by him in another portion, after he vacated in October, 1988 it was given on rent by him to Dashrath Vishwakarma, who vacated in August, 1990. Yet another other portion was given to Shri C.P. Shrivastava and after he vacated in April, 1988 it was given to Ghanshyam further upto March, 1990. In November, 1991, Defendant was allowed to occupy the portion vacated by Ghanshyam. Electricity bills (P/33 to P/52) were deposited by him. Tax with the Municipal Corporation was also deposited as per receipt (P/53). Other documents (P/54, P/57), relating to purchase of cement, deposit in JDA have also been placed on record. It was not suggested in his cross-examination by the Defendant that the loan given for construction has been repaid. He has also stated that construction was raised in his supervision. He had spent money. Santosh used to deposit taxes etc.

When we consider the statement of Defendant; Krishna Kumar Sahu, he has obtained a sum of Rs. 80,000/- from his father for construction of house. Total sum spent in the house was Rs. 1,35,000/- . He has refunded the amount to his father. His father and brother got executed an affidavit forcibly from him. However, he raised an objection when mutation was applied for by the Plaintiff in

the JDA. Ultimately mutation was not allowed. He has admitted that the family was joint at the time when lease was obtained in the year 1976. He has also admitted that Omchand Sahu used to deposit the amount in the JDA and used to give him receipts. He has admitted that he wrote letters (P/1 to P/3) to his father, used to inform his father that the amount of instalment was to be deposited. He has admitted his signatures on the affidavit (P/32). He did not mention in the objection submitted with the JDA that the affidavit was executed under duress after closing him in a room. He has further admitted in paragraph No. 24 that door etc. were prepared at Mandla in which sum of Rs. 20,000/- was spent. He had obtained Rs. 10,000/- from his father so as to make payment of bricks, for laying lenter he had obtained loan of Rs. 20,000/- from his father. For flooring a sum of Rs. 10,000/- was obtained, for plastering and finishing had taken Rs. 10,000/- as loan from his father and for inauguration of the house again Rs. 10,000/- was obtained by him from his father. He has further stated that he had not spent in the construction of the house out of his GPF account/ NSC. The averment made in written statement to that effect was incorrect. He had also admitted that the amount of rent used to be realized from tenants; Ghanshyam, Dashrath Vishwakarma etc. by his brother; Santosh Sahu and rent used to be paid to his father; Narbada Prasad, Santosh Sahu never paid rent to him. Santosh Sahu was given oral permission by him to reside in the house. He did not consider it necessary to file the documents relating to obtaining an amount from GPF for the purpose of construction of the house. Amount of bills (P/30-P/53) was paid by Santosh as he was residing at the relevant time in the house. He did not inform his department that he was constructing a house nor obtained any permission for that purpose. He was also realizing house rent allowance from the employer w.e.f. 1992 onwards.

There is other evidence on record. Pyarelal; a Mason has been examined. He has stated that Plaintiff got the house constructed. He worked as labour while the house was constructed. Anil Kumar Parsai (PW-3) a neighbour has also stated that the house was constructed under the personal supervision of the Plaintiff. Ghanshyam Prasad Kashyep (PW-4) a tenant has also stated that he was inducted by the Plaintiff; Narbada Prasad. He used to pay Rs. 350/- . He resided for two and half years. Similar is the statement of Dashrath Vishwakarma, he was also a tenant in 1988-89 @ Rs. 350/- per month. He used to pay rent to Plaintiff or to Santosh. Gopal Prasad Sen, an Electrician has stated that he did electric fittings as per the instruction of the Plaintiff. Smt. Uma Sahu daughter-in-law has also supported the case of the Plaintiff she has stated that her father-in-law purchased the property and spent the amount in construction.

When we consider the document; letter (P/1) written by Defendant on 9-9-1976. The Defendant came from Mandla a day before and gave amount to Shri Omchand Sahu for depositing in the JDA. As per letter (P/2) dated 1-1-1978, the Defendant had informed the Plaintiff that all the instalments were deposited, what was to be done further be informed. As per letter (P/3) dated 13-2-1978 the Plaintiff was required to visit Jabalpur for the purpose of registration of lease-

deed. The Defendant wrote a letter (P/4) informing the Plaintiff as to deposit of the amount in the Bank and with the JDA. There are various receipts and vouchers, electricity, water tax (Ex. P. 5 to P/30 and P/33 to P/57). All these go to show that the amount got deposited by the Plaintiff or his elder son; Santosh Sahu.

When we consider the aforesaid six tests laid down by the Apex Court in *Jaydayal Poddar v. Mst. Bibi Hazra* (supra). When we consider the first test; the source from which the purchase money came: it is apparent from letters (P/1 to P/4) admittedly written by the Defendant to Plaintiff that effective control over deposit of the amount was exercised by the Plaintiff. Defendant was seeking instructions time to time from the Plaintiff in order to deposit the amount and Plaintiff exercised the effective control over the deposit, I find truth in the statement of Plaintiff that it was he who paid the amount for being deposited with the JDA that is why the Plaintiff used to be informed and Defendant was obtaining his instructions at every step as the Plaintiff was the real owner. Even it was mentioned in the letter that everything had to be done as per his instruction. The Defendant's monthly salary after deduction was Rs. 200/- . He had not worked for sufficient period when amount of Rs. 1500/- was deposited in JDA so as to make savings to deposit said amount as paltry sum used to be received by him after deduction. Though facility to pay remaining amount in instalments was obtained, but, instalments used to be deposited after coming from Mandla and that money used to be deposited through Shri Omchand Sahu. I am not able to accept the submission of Shri K.P. Mishra, learned Senior Counsel that the facility of instalment was obtained by the Defendant, as such he had paid the amount. Facts are otherwise. There is positive evidence which suggests that the payment was made by the Plaintiff not by the Defendant.

When we come to the second test the nature and possession of the property, after the construction, Defendant was not in possession upto 1992. House was constructed in the year 1987. Admittedly Santosh the elder son of the Plaintiff occupied the house after construction, I reject the case set up by the Defendant that he was given oral permission by him to occupy the portion of the house. In fact effective control was exercised by the Plaintiff and in construction of house the money was spent by the Plaintiff. He retained the control and possession of the house. Santosh elder son of the Plaintiff occupied the house after construction not the Defendant. House was constructed in the year 1987. Admittedly; in remaining portions in 1988 two tenants were inducted by the Plaintiff. Santosh elder son of the Plaintiff used to realize the rent not the Defendant. The case set up by Defendant that the rent was permitted to be realized by Santosh and his father as father had spent money in construction of the house cannot be relied upon, in fact father was exercising the right of ownership while inducting the tenant and realizing the rent.

When we come to the third test of motive, if any, for giving the transaction a benami colour, it is not unusual that to make a purchase in the name family

member when the family was joint. Admittedly the family was joint when lease-deed came to be obtained in the year 1976. Plaintiff has stated that he believed on his son and obtained the plot in his name for ensuring that other children also obtained proper education at Jabalpur, as the Plaintiff was in service, he considered it proper to purchase the house in the name of his son. In case Defendant was the real purchaser he ought to have informed his department where he was serving and ought to have obtained the permission while raising the construction and spending the amount. In fact he has not spent amount, amount has been spent by the father. The case of loan set up by the Defendant, has been rightly rejected by the trial Court. I agree with the finding recorded by the trial Court.

When we come to fourth test of the position of the parties and the relationship, if any, between the claimant and the alleged benamidar - it was transaction by the father in the name of his son. There was nothing unusual in the same.

When we come to fifth test of the custody of the title-deeds after the sale - plethora of documents with respect to construction, payment of taxes etc have been filed by Plaintiff, though lease-deed and certain other documents have been produced by the Defendant, however, fact remains that effective control over the property was exercised by the father as apparent from statement of Defendant himself. Tax also used to be deposited by Santosh in his life time and, he was in occupation of the house.

When we come to sixth test of the conduct of the parties concerned in dealing with the property after the allotment of land was obtained from JDA. Conduct as evinced from letter, and other circumstances enumerated, and the conduct of the Defendant goes to show that the property was in fact owned and constructed by the Plaintiff for the benefit of family as deposed by the Plaintiff. For every material expenditure during construction of house money was spent by father is the candid admission made by the Defendant in his statement. Thus, it is clear that when the money has been spent for construction, for obtaining plot and for other purposes, inauguration etc. effective control was exercised by the Plaintiff. Plaintiff has successfully discharged the burden of proving that the transaction was benami.

When we come to submission raised by Shri K.P. Mishra, learned Senior Counsel as to non-mention of property at Jabalpur in the family settlement-deed dated 11-11-1998. Shri K.P. Mishra, learned Senior Counsel has referred to an order (P/31) passed by Nazul Officer. The settlement deed has not been exhibited in the case though there is pleading by the Plaintiff that the Defendant had made the admission in the settlement deed executed in the year 1988 that the property situated at Jabalpur was constructed and owned by the Plaintiff. As the document settlement deed is not on record I refrain from giving a finding on the basis of contents of settlement deed. In order (P/31) there is no mention of Jabalpur property, there was no occasion to mention the property at Jabalpur in the order as order was passed for recording separate names over property

situated at Mandla. However, there is yet clinching evidence on record in the shape of affidavit (P/32). In the affidavit (P/32) executed in 1994, the Defendant has admitted that the plot was owned by the Plaintiff and Plaintiff had spent the amount in the construction of the house. I have no hesitation in rejecting the statement of the Defendant that the said affidavit was executed under the duress. The statement of Defendant in that regard is unbelievable one, considering various facts and circumstances on record execution of the affidavit was not in doubtful circumstance it buttresses the overwhelming evidence on record and its execution cannot be said to be unnatural or under any undue influence. Not even single witness has come forward in support of Defendant that it was he who owned the property and enjoyed it in his own right at any point of time. He came to reside for the first time in the house in 1992. Thereafter, dispute arose, then an affidavit was executed.

In J. Duncan M. Derrett in Essays in Classical and Modern Hindu Law under the heading of "Family Arrangement in Developing Countries" had observed that family arrangements is an extremely valuable power which is again peculiar a peculiarity of the family arrangement, because the Courts favour the instrument whereby the peace, happiness, and welfare of families is secured and litigation is avoided. It has to be given due weight. It shows that how the property has been dealt with and intention of the parties. In the instant case, there is nothing on record to suggest that while family arrangement was entered into with respect to Mandla property, property of Jabalpur was not subject-matter of an arrangement. On the objection made by the Defendant that the settlement deed was not exhibited, as that was not stamped/registered document. Thus, I am unable to accept the submission that while family arrangement entered into in the year 1988, there was no provision made in that with respect to Jabalpur property as document itself has not been brought on record, submission cannot be accepted, otherwise Plaintiffs submission and claim was that the Defendant had admitted in the deed that the property belongs to the Plaintiff.

Shri K.P. Mishra, learned Senior Counsel has also relied upon paragraph 227 of the Mulla Hindu Law to submit that the property which was originally the separate or self-acquired property of a member of a joint family may, by operation of the doctrine of blending, become joint family property, if it has been voluntarily thrown by him into the common stock with the intention of abandoning all separate claims upon it. This intention will not be inferred from power to use conjointly, nor from the fact that income of the separate property was used to support a son. Separate property thrown into the common stock is subject to all the incidents of joint family property. There is no dispute with the aforesaid preposition. However, property has not been proved to be self acquired property of the Defendant. In the facts and circumstances pointed out it was intended to be of Plaintiff right from beginning to be enjoyed by the family.

Shri K.P. Mishra, learned Senior Counsel appearing on behalf of the Appellant has referred to the Division Bench decision of this Court in Smt. Ramkunwarbai Vs.

Ranibahu and Others, to submit that presumption of ostensible title rests in real purchaser. Presumption is that real title rest in the ostensible owner. The Court will presume an ostensible title to be the real title unless the party who seeks to assert the contrary, pleads and proves that ostensible owner is not the real owner. This burden has been successfully discharged in the instant case by the Plaintiff. I do not find that there is any material contradiction in the statement of Plaintiff as stated by Shri K.P. Mishra, learned Senior Counsel so as to render his statement unreliable. Plaintiff has stated in paragraph No. 26 that he did not deposit the amount in JDA or Corporation through the Defendant. His elder son; Santosh used to deposit taxes in Corporation. Earlier amount used to be deposited by Shri Omchand Sahu. Merely by the fact that as property stood in the name of Krishna Kumar, Corporation taxes and other dues were required to be deposited in his name, but. real enjoyment was by the family and effective control was that of the Plaintiff. Thus, I have no hesitation in affirming the finding recorded by the trial Court.

Coming to application filed under Order 41, Rule 27, CPC to take on record two certificates issued by the Co-operative Society of Ordnance Factory, Khamaria relating to the period February, 1993 to August., 2000 and September, 1986 to January, 1992: Construction of the house was already over in the year 1987 and it has not been put in the cross-examination of the Plaintiff that the amount was repaid. Nothing can be inferred from certificate dated 5-10-2002 that the amount was withdrawn for the purpose of payment to the Plaintiff and Defendant/Appellant. Suit was filed on 19-12-1994. It is improbable that after filing of the suit the amount withdrawn from OFK Co-operative Society was for the purpose of repayment of so-called loan amount. Thus, the certificate evincing withdrawal of total amount of Rs. 1 lakh in 1993, 1994, 1995, 1996, 1997, 1998, 1999 and 2000 of no value. Similarly the certificate dated 5-10-2002 cannot also not be taken on record in view of the facts and circumstances of the case and considering the stand of the Defendant. No sufficient cause is made out to file certificate at the appellate stage, thus, the application filed under Order 41, Rule 27, CPC is rejected.

Resultantly, appeal being devoid of merit, deserves to be dismissed. Same is hereby dismissed. Parties to bear their own costs.