

**(1995) 02 AHC CK 0134****Allahabad High Court****Case No:** C.M.W.P. No. 3512 of 1995

Rama Shankar Dixit

APPELLANT

Vs

VIIth Addl. District Judge and  
Another

RESPONDENT

**Date of Decision:** Feb. 9, 1995**Acts Referred:**

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

**Citation:** AIR 1995 All 293**Hon'ble Judges:** M. Katju, J**Bench:** Single Bench**Advocate:** P.N. Khare, for the Appellant; Raj Kumar, for the Respondent**Final Decision:** Allowed

### **Judgement**

M. Katju, J.

This writ petition has been filed against the impugned orders dated 28.11.1994 and 10.1.1995 by which the amendment application has been allowed in appeal.

2. I have heard Shri P.N. Khare learned Counsel for the Petitioner and Sri Raj Kumar for Respondents.

3. Since there are no disputed questions of fact it is not necessary to call for a counter affidavit. Hence I am disposing of this writ petition finally at this stage.

4. The Respondent No. 2 is owner of the premises in dispute and the Petitioner is tenant thereof. The landlady filed release application u/s 21(1)(a) of U.P. Act No. 13 of 1972 on the ground that her second son Vijai Singh Chauhan wanted to be settled in business and hence the disputed accommodation was needed for this purpose. This release application was dismissed on 24.3.1987 by the prescribed authority. The landlord filed an appeal and during the pendency of the appeal Vijai Singh Chauhan died. Thereafter the landlord filed an amendment application alleging need of her

other two sons Jai Singh Chauhan and Pratap Singh Chauhan. This application has been allowed by the impugned orders. Hence this writ petition.

5. The settled legal principle is that normally no fresh evidence is to be allowed in appeal. It is only in exceptional circumstances mentioned in Order XL1, Rule 27, CPC that fresh evidence is allowed in appeal. It follows from this that normally no amendment of the pleading should be allowed in appeal which raises fresh factual questions because if such an amendment is allowed, the result will be that fresh evidence will have to be led at the appellate stage. Hence ordinarily only such amendments of the pleading should be allowed in appeal which raises no factual questions. In the present case, the landlord by the amendment at the appellate stage is seeking to set up a new case which was not set up at all before the prescribed authority, namely, that she wants to settle two other sons in business, although before the prescribed authority, the need alleged was for Vijai Singh Chauhan alone (who subsequently died). At the appellate stage, the need has now been set up for two other sons of the Petitioner, which will require leading of evidences as to whether the need of the two other sons is genuine or not. This cannot be permitted in appeal, because it will entail examination, cross-examination, etc. at the appellate stage which is ordinarily not permissible. Hence, in my opinion, the amendment was wholly arbitrarily and illegally allowed by the appellate authority and hence the impugned orders dated 28.11.95 and 10.1.95 is set aside. However, I leave it open to the Respondent to file a fresh proceeding on the ground of need of her other two sons and when such application is filed the same shall be decided expeditiously in accordance with law.

6. The writ petition is allowed. No order as to costs.

7. A copy of this order may be given to the learned Counsel for the parties on payment of usual charges within three days.