

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6183 OF 2015

Keru Radhu Avhad and anr. : Petitioners
versus
Smt. Bababai Popat Gite : Respondent.

Mr. Amey Deshpande for the Petitioners
Mr. Vivek V Salunke for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 08th September 2015

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 29/03/2014 passed by the learned District Judge-4, Nashik by which order the application (Exhibit 36) filed by the Petitioners i.e. the Appellants in Civil Appeal No.233 of 2010 came to be rejected.

2 The said application was filed invoking Order LXI Rule 27 of the Code of Civil Procedure so as to permit the Appellants to lead additional evidence. The Appellants are faced with a decree where a declaration has been issued that the transaction in question is a mortgage and not a sale. The said decree is in favour of the Respondent herein who is the original Plaintiff. It seems that in the said Appeal an application for amendment of the written statement was filed by the Petitioners. This was to support the documents by way of xerox copies of the sale deeds and mutation entries which the

Appellants had sought to place on record in the Trial Court. The said application for amendment of the written statement came to be rejected by the Lower Appellate Court by the order dated 16/08/2011. On the matter reaching this Court by way of Writ Petition No.314 of 2012, a learned Single Judge of this court dismissed the said Writ Petition by order dated 26/08/2013. Hence the Petitioners – original Appellants were not permitted to amend their written statement so as to incorporate the pleadings in support of the said documents. It is thereafter that the instant application (Exhibit 36) under Order LXI Rule 27 of the Code of Civil Procedure came to be filed by the Petitioners – original Appellants for being permitted to lead additional evidence by way of the said documents. The Lower Appellate Court rejected the said application on the ground that the same does not satisfy the test laid down under Order XLI Rule 27 of the Code of Civil Procedure and that the said documents are not necessary for the Appellate Court to pronounce judgment.

3 The learned counsel appearing on behalf of the Petitioners i.e. the original Appellants sought to place reliance on the judgment of the Apex Court reported in (2012) 8 SCC 148 in the matter of Union of India v/s. Ibrahim Uddin and another so as to contend that the Lower Appellate Court had erred in rejecting the application when it was necessary to keep the said application for hearing along with the Appeal.

4 In my view, it is not possible to accept the said contention urged on behalf of the Petitioners. As indicated above, an application for amendment of the written statement so as to incorporate the pleadings to support the said additional evidence which is now sought to be led has already been rejected at the interim stage in the Appeal. The Lower Appellate Court was therefore in the facts of the present case not required to place the said application (Exhibit 36) for hearing along with the Appeal. The judgment of the Apex Court in *Union of India's* case (supra) therefore does not aid the Petitioners in their endeavour to seek postponement of the hearing of the application along with the Appeal. In my view, no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order.