

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

WRIT PETITION NO.7264 OF 2013

Mohan Ananda Londhe (Dead)

1/1) Smt. Mangal Mohan Londhe & ors. : Petitioners.

Versus

Smt. Radhabai Ranga Londhe and ors. : Respondents.

Mr. Sachin K Hande i/by Mr. Haribhau Deshinge for the Petitioners.

Mr. V M Mali for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.

DATE : 20th October 2015

P.C.

1 The order dated 28/06/2013 passed by the learned District Judge-4, Sangli rejecting the application (Exhibit 9) filed by the Petitioner herein i.e. the original Defendant No.1 for being permitted to lead additional evidence is taken exception to by way of the above Writ Petition.

2 The Petitioner herein is the Appellant in Regular Civil Appeal No.55 of 2007 and was the Defendant No.,1 in Regular Civil suit No.127 of 1999 which came to be decreed. The said suit was tried with Regular Civil suit No.52 of 1993 and a common judgment was rendered in both the suits.

3 In the said Appeal an application came to be filed by the Petitioner – original Defendant No.1 for being permitted to lead additional evidence

under Order XLI Rule 27 of the Code of Civil Procedure. It was the case of the Petitioner that at the time of leading evidence before the Trial Court, that the documents which are now sought to be produced were not in his possession and it is whilst going through some old papers that the said documents were found. The said case was not accepted by the Lower Appellate Court. The Lower Appellate Court observed that it is only in the circumstances mentioned in Order XLI Rule 27 of the Code of Civil Procedure that the additional evidence can be allowed to be produced and that the same cannot be permitted so as to enable a party to fill up lacuna in the evidence. The Lower Appellate Court further observed that the said documents were in possession of the Defendant No.1 and there is no plausible explanation as to why the said documents were not produced in the Trial Court. The sum and substance of the reasons of the Lower Appellate Court is that the Defendant No.1 i.e. the Appellant did not satisfy the tests laid down under Order XLI Rule 27 of the Code of Civil Procedure for being permitted to lead additional evidence.

4 In my view, having regard to the reasons mentioned in the impugned order, no case for exercise of the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]