

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7444 OF 2015

1. Vitthal s/o Tukaram Chaure
Age 64 years, Occ. Agriculture

2. Kamal Vitthal Chaure
Age 60 years, Occ. Household

3. Santosh Vitthal Chaure,
Age 44 years, Occ. Agriculture

All R/o. Sham Nagar, Ambajogai Road,
Latur, district Latur

4. Anusayabai Ambadas Gurale
Age 69 years, occ. Household
R/o. Rani Ankulga, Taluka Shirur-
Anantpal, District Latur

...Petitioners

versus

Waman Tukaram Chaure
Age 51 years, Occ. Agriculture
R/o. Anandwadi (Gaur), Taluka Nilanga
District Latur

...Respondent

...
Mrs. Madhaveswari S. Mhase, Advocate for Petitioners,
Mr. H.V. Patil , Advocate for Respondent
.....

CORAM : V. K. JADHAV, J.
DATED : 4th FEBRUARY, 2016

ORAL JUDGMENT:-

1. Rule. Rule returnable forthwith. By consent of the learned
counsel for the parties, heard finally, at admission stage

2. The petitioners are original defendants in R.C.S. No. 304 of 2009. The said suit was instituted by the respondent-plaintiff for partition and separate possession of the suit property. Learned Judge of the trial court by judgment and decree dated 29.2.2012, decreed the suit and dismissed the counter claim of the petitioners-defendants. Being aggrieved by the same, the petitioners-defendants preferred Regular Civil appeal No. 15 of 2012 before the District Court and the said appeal is pending. The petitioners-original defendants filed an application at Exh.25 for production of additional evidence before the appellate court. The same was opposed by the respondent-original plaintiff. The learned District Judge-1 Nilanga by its impugned order dated 27.3.2015, below Exh.25 in R.C.A. No. 15 of 2012 rejected the said application. Hence, this writ petition.

3. Learned counsel for the petitioners submits that the petitioners-defendants on 10.3.2012 could find out the boxes kept in the old house. Some documents were kept in the said boxes. However, in the month of February, 2012 the suit came to be disposed of. Learned counsel submits that therefore, it was not possible for the petitioners-defendants to produce the said documents before the trial court. Learned counsel submits that the petitioners-defendants established that even after exercise of due diligence, it was not possible for the petitioners to produce such evidence before the trial

court and in view of this the learned District Judge ought to have allowed application Exh.25.

4. Learned counsel for the respondent-original plaintiff submits that the petitioners-defendants had knowledge about said documents kept in the boxes. Learned counsel submits that the petitioners-defendants were not diligent to produce those documents before the trial court. Learned counsel submits that the learned District Judge has rightly rejected application Exh.25 in the pending appeal. The learned counsel in order to substantiate his contentions, places reliance on the judgment of Supreme Court in the case of ***Union of India vs. Ibrahim Uddin and another, reported in 2012 (8) SCC 148*** wherein the scope of Order 41 Rule 27 is elaborately discussed.

5. So far as the provisions of Order 41 Rule 27 (b) is concerned, the admissibility of additional evidence does not depend upon the relevancy to the issue in hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The same view is also expressed by the Apex Court in the case of ***Union of India vs. Ibrahim (supra)*** relied upon by the learned counsel for the

respondents that the appellate court may postpone consideration of said application till hearing of appeal and should take up the same at the time of hearing of appeal on merits so as to find out whether the evidence sought to be adduced is relevant and bearing on the issue involved. It appears from the impugned order that the District Judge has closed the doors forever and the document, even if find necessary at the time of final hearing for just disposal of the case, cannot be considered. In the light of above observations, following order is passed:-

O R D E R

- I. The writ petition is partly allowed.
- II. The order dated 27.3.2015 passed below Exh.25 in R.C.A. No. 15 of 2012 passed by the District Judge-1, Nilanga is hereby quashed and set aside.
- III. The lower appellate court shall postpone the consideration of application Exh.25 till hearing of the appeal and should take up the said application at the time of hearing of appeal on merits and take appropriate decision in respect of said application at that time.

IV. The learned District Judge may expedite the hearing of the appeal.

V. Writ petition is disposed of. Rule made absolute in the above terms. In the circumstances there shall be no order as to costs.

(V. K. JADHAV, J.)

rlj/