

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

WRIT PETITION NO. 1528 OF 2016

Shri Yesa alias Yashwant
Subhana Patil and Ors.

..Petitioners.

Vs

Shri Dyandev Pandurang Padwal
and Ors

.. Respondents

Mr. Sandeep S.Koregave , Advocate for Petitioners.
Mr. A.M.Adagule, Advocate for Respondent no.4.

CORAM : R.G.KETKAR,J.
DATE : 30/11/2016

PC:

1. Not on Board. At the request of Mr. Koregave, taken up for admission. Heard Mr. Sandeep Koregave, learned counsel for the petitioners and Mr. A.M.Adagule, learned counsel for respondent no.4 at length. Rule. Mr. Adagule waives service for respondent no.4. Mr. Koregave seeks permission to delete rest of the respondents as respondent no.4 is the only contesting respondent who has filed application at Exhibit-20 under Order 41, Rule 27 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') in the pending appeal.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as 'plaintiffs', have challenged the Judgment and order dated 4.12.2015 passed by the learned Ad-hoc District Judge-4, Kolhapur below Exhibit-20 in Regular Civil Suit No. 6 of 2014. By that order, the learned

District Judge allowed the application made by respondent no.4 for production of 7/12 extracts of some of the lands.

3. In support of this petition, Mr. Koregave submitted that the suit instituted by the plaintiffs was dismissed on 27.11.2013. Aggrieved by that decision, the plaintiffs preferred Appeal before the District Court. Pending the Appeal, respondent no.4 filed application on 7.7.2015 at Exh.20 under Order 41, Rule 27 of C.P.C for producing 7/12 Extracts. He has taken me through the application as also the 7/12 Extracts annexed along with that application. By the impugned order, the learned District Judge has allowed the application by observing in paragraph 4 as under:-

“4. Considering the 7/12 extracts sought to be produced and referred by both the parties to the appeal there appears genuine difference in crop inspection column. The decision challenged in this appeal has bearing to the entries in crop inspection column. Thus, in my view, since the documents sought to be produced are public documents and those appear to be necessary for deciding appeal in just manner, production of such documents should be allowed. The correctness or otherwise of such documents can be independently decided by hearing both the sides. Hence, I pass following order.”

He submitted that the learned District Judge did not record any finding as to whether respondent no.4 has satisfied any of the conditions laid down under Order 41, Rule 27 of C.P.C.

4. On the other hand, Mr. Adgule supported the impugned order. He submitted that the learned District Judge came to the conclusion that both the parties in the appeal are relying upon

the 7/12 Extracts. There appears genuine difference in 'crop inspection column'. The decision challenged in the appeal has bearing to the entries in 'crop inspection column'. The documents sought to be produced are public documents and those appear to be necessary for deciding the appeal in just manner, production of such document should be allowed.

5. In other words, Mr.Adgule submitted that the learned District Judge recorded findings as contemplated under Order 41 Rule 27 (b) of C.P.C. in holding that these documents are necessary for deciding the appeal in just manner. As these are public documents, no case is made out for interfering with the impugned order. He submitted that if production is not allowed, it will cause prejudice to the case of respondent no.4. He relied upon decision of Union of India Vs. K.V.Lakshman, AIR 2016 Supreme Court 3139.

6. I have considered the submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the application Exhibit 20 made by respondent no.4 shows that respondent no.4 contended that the documents produced by the plaintiffs are bogus, false and fictitious documents and have been produced with a view to misleading the court. It is necessary to bring the factual record before the Court and, therefore, it is necessary to produce the 7/12 Extracts. The documents sought to be produced are public

documents and if they are allowed to be produced, no prejudice would be caused to the plaintiffs.

7. With the assistance of the learned counsel appearing for the parties, I have perused the documents annexed along with application Exhibit-20. Perusal of these documents shows that they are the 7/12 Extracts of 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, 2014-15. As noted earlier, the suit was decided on 27.11.2013. Perusal of the application made by respondent no.4 shows that no explanation, worth the name, is given for not producing the 7/12 extracts which are for the period prior to deciding the suit on 27.11.2013.

8. In the case of *Union of India. Vs. Ibrahim Uddin*, (2012) 8 SCC 148, the Apex Court has exhaustively dealt with scope of Order 41, Rule 27 of C.P.C. in paragraphs 36 to 49. In paragraph 36, the Apex Court observed that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. Order 41, Rule 27 of C.P.C. enables the appellate Court to take additional evidence in exceptional circumstances. The appellate Court may permit additional evidence only and only if the conditions laid down in the Rule are found to exist. The parties are not entitled, as of right, to the admission of such evidence. Thus, provision does not apply, when on the basis of evidence on record, the appellate Court can pronounce a satisfactory judgment. The matter is

entirely within the discretion of the court and is to be used sparingly. In paragraph 39, it was observed that when a party had ample opportunity to produce certain evidence in the lower court but failed to do so or elected not to do so, cannot be allowed to produce it in appeal. The inadvertence of the party of realizing the importance of document does not constitute a substantial cause. The mere fact that certain evidence is important, is not in itself a sufficient ground for admitting that evidence in appeal.

9. Mr.Adagule relied upon decision of Union of India Vs. K.V.Lakshxman (supra) and in particular paragraph 37 thereof. In paragraph 37, the Apex Court has held that the Court has to do substantial justice to the parties. Merely because the Court allowed one party to file additional evidence in Appeal would not by itself mean that the Court has also decided the entire case in his favour and accepted such evidence. In paragraph 34, the Apex Court observed thus:-

“34. First, there was no one to oppose the application. In other words, the Respondents were neither served with the notice of appeal and nor served with the application and hence they did not oppose the application. Second, the Appellant averred in the application as to why they could not file the additional evidence earlier in civil suit and why there was delay on their part in filing such evidence at the appellate stage. Third, the averments in the application were supported with an affidavit, which remained un-rebutted. Fourth, the application also contained necessary averment as to why the additional evidence was necessary to decide the real controversy involved in appeal. Fifth, the additional evidence being in the nature of public documents and pertained to suit land, the same should have been

taken on record and lastly, the Appellant being the Union of India was entitled to legitimately claim more indulgence in such procedural matters due to their peculiar set up and way of working.”

In my opinion, the said decision is not applicable to the facts of the present case. Respondent no.4 has not given any reason for not producing the 7/12 Extracts for the period prior to 27.11.2013 when the suit was instituted.

10. Applying the tests laid down to the facts of the present case, no case is made out for production of additional evidence. The learned District Judge has merely observed in paragraph 4 that the documents sought to be produced are public documents and appear to be necessary for deciding the appeal in just manner. Reason given by the learned District Judge is not in tune with the ratio laid down by the Apex Court in Union of India (supra). Hence, impugned order is set aside and Application-Exhibit 20 is dismissed. It is, however, expressly made clear that where a decree is appealed from by respondent no.4, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

11. Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)