

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO.4981 OF 1016**

Atul s/o Bharat Gawali

Petitioner

Versus

Karbhari s/o Kisan Gawali & others

Respondents

Mr. V.R. Dhorde advocate for the petitioner

Mr. P.F. Patni advocate for Respondent No.2

---

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 2nd August, 2017.)

**PER COURT :-**

1 The petitioner - plaintiff is aggrieved by the order dated 29.3.2016 passed by the Appeal Court, by which the defendant No.2 was permitted to file certified copies of the record of the previous litigation between the parties for assistance in the proper adjudication of RCA No.8/2012.

2 The petitioner has raised a grievance, which is two fold. Firstly that, these documents should have been filed by defendant No.1, much before the litigating sides canvassed their final arguments. Secondly, Exhibit 44 does not bear out any such pleading, which would convince the Court that Order 41 Rule 27 has been properly complied with and thereby the production of the documents could be permitted.

3 Notwithstanding the vehement submissions of the learned counsel for the petitioner, the fact remains that the five documents that are now permitted to be placed on record by the Appeal Court, are the certified copies of the petition from the record of the previsions litigation in RCS No.234/95. The fact of the earlier litigation has been pleaded and is on record before the Appeal Court. The Appeal Court, after cursorily perusing the documents, proposed to be filed, came to a conclusion that, they could be considered on their merits, only after recording the submissions of all the sides on those documents as well.

4 In so far as the scope of leading additional evidence for proving those documents which were not earlier on record or were not proved are concerned, the law has been settled by the Honourable Apex Court in the matter of **Malayalam Plantations Ltd versus State of Kerala & Anr (2010 (13) SCC 487) & Union of India versus Ibrahim Uddin & Anr (2012 (8) SCC 148)**.

5 Such documents, wherein specific leave to adduce further or additional evidence has been sought, are to be considered along with the main appeal. In the instant case, the defendant no.2 who claims to be the first wife of defendant No.1 was given a share in a property in lieu of maintenance. She is said to be a

destitute lady and has no source of income except with the aid of the property which is said to be handed over to her by a gift deed. It was in this context that the certified copies of the earlier litigation were sought to be placed on record, though belatedly.

6 Considering the above and in the light of the law laid down by the Honourable Apex Court in the matter of **Syed Yakoob versus K.S. Radhakrishnan & others** (AIR 1964 SC 477) and **Surya Dev Rai versus Ram Chander Rai & others** (2003 (6) SCC 675), the impugned order does not appear to be perverse or erroneous or likely to cause gross injustice to the petitioner. The Appeal Court has ensured that all the litigating sides would be at liberty to address the Court even on the documents which are now permitted to be filed and as such, I find the said order to be just, proper and equitable. Considering the above, this petition, being devoid of merit, is therefore, dismissed.

7 It is informed by the parties that, the learned judge of the Appeal Court, who had earlier heard the final submissions in the matter, has been recently transferred and in any case all the litigating sides will have to advance their final submissions afresh before the new learned Judge of the Appeal Court.

**(RAVINDRA V. GHUGE , J)**