

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5967 OF 2014

Jawahar s/o Premraj Mutha,
Age-74 years, Occu-Journalist,
R/o 3767, Navi Peth,
Ahmednagar

-- PETITIONER

VERSUS

1. Smt.Tarabai Shantilal Mutha,
Age-78 years, Occu-Household,
R/o Mutha Apartment,
Maharshinagar, Zanzale Bagh,
Near Soubhagya Mangal Karyalaya,
Pune,
2. Pratima Rajendra Gandhi,
Age-58 years, Occu-Household,
R/o Mutha Apartment,
Maharshinagar, Zanzale Bagh,
Near Soubhagya Mangal Karyalaya,
Pune,
3. Smt.Badambai Premraj Mutha
(dead)
4. Ramesh Premraj Mutha,
Age-70 years, Occu-Business,
R/o Boat Wrundhawan Park,
Club Road, Pune-1
5. Suresh Premraj Mutha,
Age-66 years, Occu-Business,
R/o Plot No.81, R.P. Khanna's Bungalow,
Near Samarthnagar,
Aurangabad,
6. Tarabai Sanjaykumar Jain,
Age-70 years, Occu-Household,
R/o C/o Rajasthan Cloth Stores,

Takhatmal Estate, Amravati,

7. Vimalbai Harakchand Gandhi,
Age-76 years, Occu-Household,
R/o Mahavirnagar, Parag Corner,
Society, Savedi, Ahmednagar
8. Vijay s/o Vishnudas Marda,
Age-40 years, Occu-Business,
R/o Station Road, Ahmednagar
9. Vishnudas s/o Harilal Marda,
Age-70 years, Occu-Business,
R/o Station Road,
Ahmednagar

-- RESPONDENTS

Mr.U.S.Malte, Advocate for the petitioner.
Mr.K.D.Jadhav, Advocate for respondent No.4.
Mr.A.D.Ostwal, Advocate for respondent Nos.1, 2, 5 to 7.
Mr.L.B.Palod, Advocate for respondent Nos.8 and 9.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 23/08/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.
2. The petitioner is aggrieved by the order dated 20/06/2014 passed by the Appellate Court by which the application filed under Order 41 Rule 27 of the CPC has been rejected. The petitioner submits that he had filed the application before the Appeal Court. Instead of considering the application alongwith the appeal, the same

has been rejected.

3. After considering the submissions of the learned Advocates for the litigating sides, it is obvious that the law on this aspect has been well settled by the Hon'ble Apex Court in the matter of Malayalam Plantations Limited Vs. State of Kerala and another [(2010) 13 SCC 487] , Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] and recently in A.Andisamy Chettiar Vs. A.Subburaj Chettiar [(2015) 17 SCC 713].

4. Considering the above, the application Exh.26 could not have been dismissed by the Appellate Court. It is informed that the Appellate Court has set the stage of final hearing in Reg.Civil Appeal No.92/2012.

5. Considering the above, this petition is allowed. The impugned order dated 20/06/2014 is quashed and set aside and application Exh.26 is remitted to the file of the Appeal Court in RCA No.92/2012. Needless to state, the Appeal Court would consider the said application alongwith the appeal and shall decide the same by considering the law laid down in the cases of Malayalam Plantations, Ibrahim Uddin and A. Andisamy (supra).

6. Since the appeal was actually lodged in 1999 and after transfer, has been registered as RCA No.92/2012, it is expected that the learned Advocates for the respective sides would conclude their arguments on or before 29/09/2017 and the Appeal Court shall endeavour to dispose of the said appeal alongwith application Exh.26 on or before 30/11/2017. Needless to state, considering the import of Order 41 Rule 27, if the Appeal Court decides to record the evidence in the appeal proceedings, the time frame mentioned in this order shall then not be applicable.

7. Rule is made absolute in the above terms.

(Ravindra V.Ghuge, J.)