

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.9719 OF 2014

Suhas Bhagwat Chaudhari,
deceased, through her L.R.:
Rajshekhar Bhagwat Chaudhari,
age: 55 years, Occ: Business,
R/o 270, Navi Peth,
Khiroda Bhavan, Jalgaon,
District Jalgaon.

Petitioner

Versus

01 Pralhad Kashiram Chaudhari,
since deceased through L.Rs:

1A) Smt.Pramila Pralhad Chaudhari,
age: 78 years, Occ: Household;

1B) Ku.Kalpana Pralhad Chaudhari,
age: 51 years, Occ: Household;

1C) Nitin Pralhad Chaudhari,
age: 58 years, Occ: Agriculture,

1A to 1C R/o Khiroda, Tq.Raver,
District Jalgaon.

1D) Su. Jayshri Girdhar Patil,
age: 59 years, Occ: Household,
R/o 12, Subhagwadi, Ring Road,
Jalgaon, Tq. & District Jalgaon.

1E) Sau. Aruna Krushna Patil,
age: 55 years, Occ: Household,
R/o C/o K.D.Patil, Shahu Nagar,
Pimprala Road, Jalgaon,
District Jalgaon.

1F) Sanjay Pralhad Chaudhari,
age: 57 years, Occ: Agriculture
& Medical Practitioner,
R/o 6, Ganesh Colony Chauk,

Jalgaon, Tq. & Dist.Jalgaon.

02 Sunil Bhagwat Chaudhari,
age: 38 years, Occ: Education,
R/o 270, Navi Peth,
Khiroda Bhavan, Jalgaon,
District Jalgaon.

03 Sau. Lalita Yuvraj Wani,
age: 63 years, Occ: Teacher,
R/o Rajkamal, 7, Shraddha
Colony, Jalgaon,
Tal. & District Jalgaon.

Respondents

04 Sau. Usha Jayant Rane) Respondents No.4 & 5
) deleted vide Court's order
05 Sau. Chayya Balasaheb Patil) dated 18.11.2014.

Mr.G.S.Rane, advocate for the petitioner
Mr.G.V.Wani, advocate for Respondents No.1-B to 1-F.
Respondents No.1A & 1D served.
Respondents No.4 & 5 deleted vide Court's order dated 18.11.2014.

CORAM : S.B.SHUKRE, J.
DATE : 02nd February, 2017

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2 Considering the documents sought to be adduced in evidence additionally and also observations of the learned District Judge, Jalgaon, that the petitioner has failed to show as to how the documents would be of any help to the first appellate Court in doing justice between the parties, I am of the view that it could have been appropriate for the learned Principal District Judge to

have waited till the stage of final hearing fixed in the appeal and then proceed to decide application under Order XLI Rule 27 of the Code of Civil Procedure.

3 It appears from the observations made in the impugned order that the learned Principal District Judge has taken a view that these documents would not be of any help to the first appellate Court and the first appellate court would be in a position to decide the appeal appropriately on the basis of the evidence already adduced by the parties. I am afraid, these observations are not in consonance with the principles of law laid down by the Hon'ble Apex Court. In the case of **Union of India Vs. Ibrahim Uddin and another**, reported in 2013 AIR SCW 2752, the Hon'ble Apex Court has held that ordinarily, it would be better that such applications are decided at the stage of final hearing for the reason that plea for additional evidence to be placed on record would be better appreciated only after concerned parties are heard and evidence already filed on record is considered appropriately. In this view of the matter, impugned order is liable to be quashed and set aside.

4 In the result, writ petition is allowed. The impugned order is quashed and set aside. The application filed by the petitioner-original appellant shall be heard and decided at the stage of final hearing of the appeal. The suit has been filed in the year 1998 and, therefore, it would be appropriate that the learned Principal District Judge accords expeditious hearing to the parties so as to decide the appeal finally on merits and, therefore, it is further directed that the learned Principal District Judge shall

dispose of the appeal within three months from the next date fixed in the appeal.

5 Rule is made absolute in above terms. No costs.

S.B.SHUKRE
JUDGE

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