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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION (ST) NO. 30711 OF 2017

Shantilal Haribhau Gaikwad ...APPLICANT
VERSUS (Orig. Appellant)

Dilip Bhagwan Gaikwad & Ors. ...RESPONDENTS
(Orig. Respondents)

Mr. R.R. Mantri h/f Mr. Sancheti Rahul R., Advocate
for Applicant.

Mr. N.C. Garud, Advocate for Respondent No. 1.

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CORAM : NITIN W. SAMBRE, J.
DATE : 13th SEPTEMBER, 2017

ORAL ORDER :

The appellant-original defendant no. 2 moved an application under Order 41 Rule 27 of the Code of Civil Procedure with a prayer for production of death certificate issued on 19.2.2017 and 1.7.2017 by the Municipal Authority being additional evidence certifying death of an female by name Vithabai Bhagwan Gaikwad.

2. Shri. Mantri, the learned counsel for the applicant submits that the fact about the death of Vithabai was not within the knowledge of the present applicant and as such, at the relevant

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time, they had not inquired and produced the evidence viz death certificates at the time of the decision. He submits that since the said documents were beyond the reach of the applicant, as some were part of the record of the Municipal Corporation, Ahmednagar, the applicant could not have produced the same at the time of recording of evidence before the trial Court.

3. The prayer in the said application is strongly resisted by Shri. N.C. Garud, learned counsel for the LRS of original plaintiff no. 1 on the ground that requirement under Order 41 Rule 27 is not satisfied.

4. Considered the rival submissions. From perusal of the judgment of both the courts below, particularly the defence raised by the present applicant in the suit in question, it is noted that the fact about place and date of

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death Vithabai was within the knowledge of the present applicant since year 2009, when the suit in question came to be filed. Looking to the nature of defence raised by the present applicant, in my opinion, the requirements of provisions of Order 41 Rule 27 Code of the Civil Procedure are not satisfied, as such, the application in my opinion, deserves rejection and is accordingly rejected.

(NITIN W. SAMBRE, J.)

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