

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

WRIT PETITION NO. 11999 OF 2016

Bhaskar Bhausahab Badadhe

..PETITIONER

VERSUS

Devram Kundlik Bhagat
(Died) Through L.Rs.

Bhagubai Devram Bhagat and Others

..RESPONDENTS

....

Mr. S.D. Kotkar, Advocate for petitioner.

Mr. S.S. Kulkarni, Advocate for Respondent Nos. 3 to 8.

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**CORAM : RAVINDRA V. GHUGE, J.
DATED : 31st JULY, 2017**

ORDER :

1. This matter was taken on production board since a motion was moved in the morning for the hearing of this petition.

2. The petitioner is aggrieved by the order dated 17th September, 2016 passed by the Appellate Court by which application Exhibits 41 and 43 were rejected. There is no dispute that Exhibits 41 and 43 are identical.

3. I have considered the submissions of the learned Counsel for the respective sides.

4. Though the petitioner has tried to contend that Exhibits 41 and 43 have been filed under Order 41 Rule 27 of the Code of Civil Procedure, I find that the application was only for production of the documents. It was not specifically contended/pleaded that additional evidence is sought to be led and for the purpose of adducing additional evidence, some documents were required.

5. I have perused the impugned order which is reasoned and clearly indicates that the documents sought to be produced, were claimed to have been found recently and were sought to be produced after twelve years. Regular Civil Appeal No. 66 of 2009 is pending before the Appellate Court and is now at the stage of final hearing.

6. Considering that the applications were not filed for leading further evidence/additional evidence and were primarily filed for production of documents, reasons for which were not adequately explained, I do not find that the Trial Court has committed any error in passing the impugned order. It however cannot be ignored that in the event the petitioner desires to lead additional evidence, such an application could have been entertained by the Appellate Court only at the stage of hearing the appeal finally, keeping in view the judgments of the Hon'ble Apex Court in the matter of *Malyalam*

Plantations Ltd. Vs. State of Kerala and Another AIR 2011 SC 559 and Union of India Vs. Ibrahim Uddin and Another 2013 AIR SCW 2752.

7. Considering the said position, this petition is disposed off. It is however made clear that in the event the petitioner files an application under Order 41 Rule 27 for leading additional evidence and coupled with the same makes a request for production of documents, within a period of two weeks from today, the Trial Court would consider such an application on its own merits alongwith the main appeal in the light of Malyalam Plantations Ltd. and Ibrahim Uddin (supra).

8. In the event the Trial Court is pleased to allow such an application, it may consider imposition of costs as may be deemed proper considering the strong objection of the respondents.

(RAVINDRA V GHUGE, J.)

SSD