

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2506 OF 2018

KUNDLIK SAVLERAM GADILKAR AND OTHERS
VERSUS
DAGDU NANA GADILKAR SINCE DECEASED

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Advocate for Petitioners : Shri Gangakhedkar Shailendra S
Advocate for Respondents 2C to 2E and 3 : Shri Tripathi S.H.
h/f Shri Gawali A.K.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 13, 2018

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PER COURT :-

1. The learned counsel for the contesting original defendants has appeared in the matter. Learned counsel for the petitioners submits that respondents 3 to 10 be deleted as they are non-contesting respondents. Leave to delete is granted at the risk of the petitioners. Deletion be carried out forthwith.

2. The petitioners are aggrieved by the order dated 3.10.2018, delivered by the appellate Court, by which, the contesting respondents / appellants have been permitted to lead additional evidence by allowing application Exhibit 30 under Order XLI Rule 27 of the Code of Civil Procedure (CPC).

3. Both the learned Advocates have canvassed strenuously and have taken me through the voluminous petition paper book.

4. Considering the conspectus of this matter, in which the issue of when could an application under Order XLI Rule 27 of the CPC be allowed in a pending appeal, is involved, I am not required to advert to the entire extensive submissions of the learned Advocates.

5. The issue of leading additional evidence under Order XLI Rule 27 of the CPC has been settled by the Honourable Apex Court in the matter of Malyalam Plantations Ltd. Vs. State of Kerala [AIR 2011 SC 559], Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] and A. Andisamy Chettiar Vs. A. Subburaj Chettiar [AIR 2016 SC 79].

6. It appears from the record that none of the litigating sides before the appellate court have taken the pains of citing the above referred three judgments so as to appraise the appellate Court of the law, which is now crystallized. Had the judgments been cited, the appellate court would have been properly assisted.

7. Considering the above, this petition is partly allowed and the impugned order dated 10.1.2018 is quashed and set aside. Application Exhibit 30 is restored to the file of RCA No.117 of 2015 and the said application would be considered by the appellate Court while deciding the said appeal.

8. All contentions of the litigating sides, on Exhibit 30, are kept open.

(RAVINDRA V. GHUGE, J.)

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