

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 6424 OF 2018

WITH

WRIT PETITION NO. 6425 OF 2018

KESHAV NAMDEO DHAVLE AND OTHERS

VERSUS

PRATAPSING KHUSHALSING GAIRWAL AND OTHERS

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Advocate for Petitioners : Shri Shah Subodh P.

Advocate for Respondents 1 to 3 : Shri Salunke S.J.

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CORAM : RAVINDRA V. GHUGE, J.

Dated: September 26, 2018

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PER COURT :-

1. I have heard the learned Advocates for the respective sides.
2. The appellate court has rejected applications Exhibits 19 and 20 in RCA No.192 of 2012 and Exhibits 18 and 19 in RCA No.193 of 2012. These applications were filed for seeking permission to lead additional evidence under Order XLI Rule 27 of the CPC and for seeking appointment of a Court Commissioner so as to enable the party to rely upon the report of the Court Commissioner.
3. The issue as regards adducing additional evidence is settled by the Honourable Apex Court in the judgments delivered in Malyalam

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Plantation 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. Suburaj Chettiar [AIR 2016 SC 79].

4. In my view it would have been appropriate for the appellate Court to consider applications Exhibits 19 and 20 and Exhibits 18 and 19 respectively, while deciding the main appeals. It, however, cannot be ignored that the petitioners / appellants had insisted on a hearing on these three applications without rendering assistance to the appellate Court by not citing the above stated three judgments of the Honourable Apex Court.

5. In view of the above, both these petitions are partly allowed. The impugned orders dated 10.1.2018 on Exhibits 19 and 20 and Exhibits 18 and 19 respectively in both the appeals are set aside and these applications are restored in both the pending appeals, so as to be considered on their own merits, while deciding the appeal finally.

6. Needless to state, as both the appeals are pending final hearing after being lodged in 2012, the litigating sides would advance their final submissions without seeking any adjournment on the first approaching

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date. They are at liberty to tender written notes of submissions without seeking an adjournment and the appellate Court shall decide the appeals along with Exhibits 19 and 20 and Exhibits 18 and 19 respectively as expeditiously as possible and preferably on/or before

31.12.2018.

Ajay
Kishanrao
Losarwar

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by Ajay
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(RAVINDRA V. GHUGE, J.)

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