

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4776 OF 2015
(Tukaram s/o Vishwanath Kantule and others Vs. Sharadkumar s/o
Govindrao Pande and another)

Mr.S.J.Salunke, Advocate for the petitioners.
Mr.M.R.Jadhav, Advocate for respondent No.1.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 06/07/2018

PER COURT :

1. By the consent of the parties, this matter is heard.
2. The Appellate Court has allowed Application Exh.27 in Reg.Civil Appeal No.12/2012 under Order 41 Rule 27 of the Code of Civil Procedure for permitting additional evidence to be brought on record. It is quite apparent that the litigating sides have not rendered any assistance to the Appellate Court by not citing the following 3 judgments :-

- [1] Malayalam Plantations Limited Vs. State of Kerala and another
[(2010) 13 SCC 487] = [AIR 2011 SC 559].
- [2] Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC
148] = [2013 AIR SCW 2572].

[3] A. Andisamy Chettiar Vs. A.Subburaj Chettiar [(2015) 17 SCC 713].

3. The Hon'ble Apex Court has crystallized the law in the above stated judgments that an application seeking leave to bring additional evidence on record under Order 41 Rule 27 of the CPC, has to be considered while deciding the appeal finally. Had these judgments been cited by the litigating sides, the Appellate Court would not have passed the impugned order.

4. Considering the above, this petition is partly allowed. The impugned order dated 02/02/2015 is quashed and set aside and Exhibit 27 is restored and shall be considered by the Appellate Court while deciding the appeal finally.

5. Learned Advocates submit that since the appeal is pending for about 6 years, interest of justice would be served if the same is expedited. As such, the Trial Court shall endeavour to decide RCA No.12/2012 as expeditiously as possible and on or before 28/02/2019.

(Ravindra V.Ghuge, J.)