

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11599 OF 2018
(Chandrashekhar s/o Irappa Hurdule and another Vs. Dwarkabai
w/o Manikrao Kankal and others)

Mr.H.V.Patil, Advocate for the petitioners.
Mr.S.S.Rathi, Advocate for respondent Nos. 1 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 17/10/2018

PER COURT :

1. I have heard the strenuous submissions of the learned Advocate for the petitioners.
2. The petitioners, who are original defendants had moved an application Exh.73 for seeking appointment of a Court Commissioner in Rent Appeal No.3/2014 which is already posted for final hearing since July 2017.
3. It requires no debate that appointment of a Court Commissioner though can be permitted, is also likely to involve an element of additional evidence if either of the parties are aggrieved by the report and the map placed on record by such a Court Commissioner. This is turn would attract Order 41 Rule 27 if the

stage comes to additional evidence being recorded in relation to such report of the Court Commissioner.

4. The Hon'ble Apex Court has dealt with the aspect of leading additional evidence at the Appellate Stage in Malayalam Plantations Limited Vs. State of Kerala and another [(2010) 13 SCC 487] = [AIR 2011 SC 559], Union of India Vs. Ibrahim Uddin and another [(2012) 8 SCC 148] = [2013 AIR SCW 2572] and A. Andisamy Chettiar Vs. A.Subburaj Chettiar [(2015) 17 SCC 713].

5. By the impugned order, the Appellate Court has posted the application of the petitioners for a hearing alongwith the main appeal. I do not find that the said order could be termed as being perverse or erroneous or likely to cause gross injustice to the petitioners.

6. In view of the above, this petition is disposed of. These litigating sides would advance their final submissions in the Appellate Court on the ensuing date without seeking any adjournment. Needless to state, the petitioners would canvass Exh.73 alongwith their contentions in the said appeal.

(Ravindra V.Ghuge, J.)