

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10747 OF 2015

LOTAN KASHIRAM BAVISKAR
VERSUS
PREMCHAND @ ANIL SOMA SONAWANE AND OTHERS

...
Mr. Girish Rane, Advocate h/f Mr. H.P. Randhir, Advocate for
petitioner
Mr. V.P. Patil, Advocate for respondent no.1
...

CORAM : SUNIL P. DESHMUKH, J.
DATE : 10-10-2018

ORDER :

1. Obviously, order dated 04-09-2015 passed by assistant sessions judge, Amalner in regular civil appeal no. 58 of 2012 impugned in present writ petition, has been passed during pendency of regular civil appeal and in view of decision of supreme court in case of *Union of India V. Ibrahim Uddin and anr.* reported in 2013 *AIR SCW 2752 (1)*, an application of additional evidence is to be considered along with the appeal, is unsustainable.

2. Learned counsel Mr. Rane holding for Mr. Randhir for petitioner submits that since part of impugned order has favored him and his request to the extent of permitting to lead evidence with respect to certified copy of judgment and decree in special civil suit bearing no. 32 of 2005 is allowed, the same may be

maintained. However, the documents *viz.* certified copy of Exhibit – 1 in special civil suit no. 32 of 2005, certified copies of Index-II and the sale deed dated 23-05-2000 are concerned, the appellate court did not appreciate the application properly and erroneously rejected the application in respect of said document. It is a matter of fact that the oral evidence in relation to the documents which petitioner is seeking to bring on record is already adduced before trial court. The oral evidence would be discarded for want of documentary evidence. He submits, for proper and just decision, documents purported to be produced on record which are in the nature of public documents and thus would have sanctity of law, ought to have been allowed to be produced.

3. Learned counsel for respondents gracefully submits that he has no particular objection for certified copies of judgment and decree passed in special civil suit no. 32 of 2005 against present petitioner being brought on record. He purports to submit that there is no due diligence shown by petitioner while making the application. It is only in order to fill up lacuna the application for additional evidence at appellate stage has been filed at belated stage without assigning reasons for non-production of these documents before the lower court.

4. However, looking at decision of supreme court referred to above, the order cannot be sustained, as such, the same is set aside. While considering the application for additional evidence, the court may give regard to that respondents herein do not have particular objection to production or evidence of documents as allowed under impugned order.

5. Needless to refer that application Exhibit – 17 gets restored for reconsideration, in accordance with observations of supreme court.

6. Regular civil appeal no. 58 of 2012, be expedited.

7. With this, writ petition is disposed of.

[SUNIL P. DESHMUKH]
JUDGE

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