

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 536 OF 2017

SITABAI BANSI SABLE
VERSUS
KASHINATH MAHADU RAYKAR AND ANOTHER

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Advocate for Petitioner : Mr. Garud N. C.
Advocate for Respondent: Mr M G Deokate h/f V S
Badakh

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CORAM : V.K. JADHAV, J.
Dated: April 10, 2018

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PER COURT :-

1. Heard finally with consent at admission stage.
2. Being aggrieved by the judgment and decree passed by the 2nd Jt. Civil Judge. J.D. Shrigonda, dated 11.2.2013 in R.C.S. No.85/2007, thereby partly decreed the suit. The original defendant no.1 (legal heirs of respondent No.1/plaintiff) preferred R.C.A. No.119/2013 before the District Court, Ahmednagar. Pending the appeal, respondent no.1 has filed an application under Order 41 rule 27 of the Civil Procedure Code for additional evidence. Learned District Judge, No.2, Ahmednagar, by impugned order dated 21.9.2016 below

aaa/-

exh.21 in RCS No.119/2013 allowed the said application.

Hence, this writ petition.

3. Learned counsel for the petitioner/original plaintiff submits that, the learned District Judge-2, Ahmednagar should have considered the application exh.21 filed under order 41 rule 27 of the Civil Procedure Code for additional evidence at the time of final hearing of the appeal. Furthermore, the learned District Judge, Ahmednagar, though allowed the application, further in clause no.2 of the operative part of the order below exh.21, stated that production of the documents alongwith list annexed with the application is allowed. Learned counsel submits that, it creates confusion as to whether the learned District Judge has only allowed the production or whether allowed production of the additional evidence.

4. Learned counsel for respondents/original defendant no.1 submits that, document sought to be produced are the original sale deeds, 7/12 extracts,

birth certificate, etc. Said documents are relevant for the purpose of just decision in the appeal. Papers are coming from the proper custody and were not available at the time of filing of the suit. Learned District Judge, Ahmednagar has rightly exercised the powers under order 41 Rule 27 (aa) of the Civil Procedure Code. No interference is required.

5. It appears from the order that before final hearing of the appeal, the first appellate court has allowed the application exh.21 under order 41 rule 27 of Civil Procedure Code seeking production of the additional evidence. However, considering the documents which are mostly the public documents placed on record, I do not want to interfere in the impugned order. However, the learned District Judge-2, Ahmednagar shall consider the effect of said documents at the time of final hearing and pass appropriate orders while disposing the appeal. Alongwith some public documents sale deeds, birth certificate are also produced on record and unless and until those documents are duly proved, same

cannot be read in evidence. It is thus expected from the First Appellate Court to pass an appropriate order at the time of disposal of the appeal after hearing both the sides finally. Writ Petition accordingly disposed of. No costs.

(V.K. JADHAV, J.)

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