

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

WRIT PETITION NO. 6649 OF 2019

Manohar S/o Nagnath Sangewar and another	... <u>Petitioner</u>
<u>Versus</u>	
Rajesh Dattatraya Waijwade and another	... <u>Respondents</u>

Mr. S.V. Natu, Advocate for petitioners.

CORAM : RAVINDRA V. GHUGE, J.

DATE : 11th JUNE, 2019

PER COURT:

1. The petitioners are appellants in Regular civil appeal No. 23 of 2014. An application Exh. 124 was filed invoking Order XLI Rule 25 of the Code of Civil Procedure contending that objections were raised before the Trial Court while recording the evidence below Exh. 105. The said objections were not decided by the Trial Court and it proceeded to decide Special Civil Suit No. 59 of 2009 by the judgment dated 18th February 2014, which is the subject matter of challenge in the regular civil appeal. The appellants prayed that an issue be cast that the Trial Court has not decided their objections at Exh. 106 and hence the suit may be remanded. The said application is rejected by the impugned order concluding that the '*Bhadepatra*' was admitted and the plaintiffs' witness Dattatraya has proved the '*Bhadepatra*' (Exh. 106) in his evidence.

2. The learned Advocate for the petitioners submits that the ground that the Trial Court did not decide their objections in respect of Exh. 106 forms one of the grounds for the appeal. By the impugned order, observations are likely to come in the way of the petitioners.

3. In my view, application Exh. 124 should not have been filed by the appellants when a specific ground has been raised in the memo of the appeal. Moreover, orders passed on such an interlocutory application are restricted to the decision in such an application and it cannot be a hurdle for the final adjudication of the proceedings.

4. In view of the above, this petition is disposed off by holding that all observations of the Appellate Court set out in the impugned order dated 23rd April, 2019 would be restricted to the rejection of the application Exh. 124. The Appellate Court would consider the record and proceedings in special civil suit No. 59 of 2009 and would consider all the grounds and contentions of all the litigating sides while deciding R.C.A. No. 23 of 2014.

(RAVINDRA V. GHUGE)
JUDGE