

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO.2014 OF 2018

BHAGWAN SADASHIV TARE AND OTHERS
VERSUS
NAJMA BEGUM BHIKU PATEL

.....
Advocate for Petitioners : Mr. Milind K. Deshpande
Advocate for Respondents : Mr. M. A. Khan
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CORAM : V. K. JADHAV, J.
DATED : 28th NOVEMBER, 2019

PER COURT:-

1. Heard both sides.
2. In view of law laid down by the Supreme Court of India in the matters of ***Malyalam Plantations Limited vs. State of Kerala and another*** reported in ***AIR 2011 SC 559, Union of India vs. Ibrahim Uddin and another***, reported in ***(2012) 8 SCC 148*** and ***Andisamy Chettiar vs. Subburaj Chettiar***, reported in ***AIR 2016 SC 79***, the impugned order date 01.11.2017 passed by the Ad-hoc District Judge-2, Aurangabad below Exh.23 in Regular Civil Appeal No. 404 of 2012 is not sustainable. It is for the learned Judge of the first appellate court to consider the application Exh.23 seeking permission to adduce additional evidence while deciding the main appeal and not in piecemeal. In view of above, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby partly allowed.
- II. The impugned order dated 01.11.2017 passed below Exh.23 in Regular Civil Appeal No. 404 of 2012 is hereby quashed and set aside. The first appellate court shall decide the application Exh.23 filed under order 41 Rule 27 of C.P.C. while deciding the main appeal.
- III. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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