

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3888 OF 2020

DILIP VINAYAKRAO KULKARNI
VERSUS
GANESH DATTOBA ALIAS DATTATRAYA CHAVAN AND OTHERS

Mr.C.V.Dharurkar, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 13/03/2020

PER COURT :

1. I have heard the learned Advocates for the petitioner/plaintiff and the respondent/defendant, in RCS No.02/1995. Grievance is as regards the order dated 06/12/2019 passed by the First Appellate Court, by which application Exh.24 seeking additional evidence to be adduced under Order 41 Rule 27, has been rejected.

2. The learned Advocate for the respondent has strenuously opposed this petition and submits that the same be dismissed with heavy costs.

3. The Hon'ble Apex Court has delivered the following judgments

concluding that an application under Order 41 Rule 27 of the CPC, will have to be heard alongwith the regular civil appeal pending, together :-

- [a] *Malyalam Plantation Ltd. Vs. State of Kerala* [AIR 2011 SC 559],
- [b] *Union of India Vs. Ibrahim Uddin and another* [(2012) 8 SCC 148]
- [c] *A. Andisamy Chettiar Vs. A. Suburaj Chettiar* [AIR 2016 SC 79].
- [d] *Jagdish Prasad Patel (Dead) through LR's and another Vs. Shivrath and others* [(2019)6 SCC 82]

4. In view of the above, this petition is partly allowed only on account of Exhibit 24 having been decided prior to considering RCA No.18/2014 on its merits. Had the judgments of the Hon'ble Apex Court been cited, the Appellate Court would have decided Exh.24 alongwith the appeal. It is only for this reason that the impugned order dated 06/12/2019 is set aside.

5. The learned Advocates submit that the appeal is now posted for final arguments on 20/03/2020. As such, application Exh.24 shall be considered alongwith the main appeal. The Appellate Court shall note that the impugned order has not been faulted on its merits and is set aside in view of the law crystallized by the Hon'ble Apex Court

as regards the stage at which it has to be considered. All contentions of the litigating parties are kept open. Parties are at liberty to tender their written submissions besides oral submissions.

(Ravindra V.Ghuge, J.)