

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.904 OF 2020**

Krishna Dhondu Dhanawade (Since deceased)

Through Legal Heirs

Shevanti Krishna Dhanawade & Ors.

...Petitioners

Vs.

Damodar Rama Umasare (Since deceased)

Through Legal Heirs

Indira Damodar Umasare & Ors.

...Respondents

Smt. Deepti Wadkar, Advocate for the Petitioners.

Mr. Shripad Murthy i/b Mr. Abhishek Patil, Advocate for Respondent Nos.1 (a) to 1 (f).

CORAM : A.S. GADKARI, J.

DATE : 11th MARCH, 2020.

PC. :

. By the present petition, the petitioners/original plaintiffs have impugned the Order dated 25th January, 2019 in Regular Civil Appeal No.78 of 2009 passed below Exh.63 under Order 41 Rule 27 of the Code of Civil Procedure, 1908, rejecting it with costs, by the Learned Ad-hoc District Judge, Khed, Taluka Khed, District Ratnagiri.

2. The record indicates that, the Regular Civil Suit bearing no.19 of 1998 preferred by the petitioners has been dismissed with costs by the learned 2nd Civil Judge, Junior Division, Chiplun by its Judgment and Order dated 23rd

September, 2009. Being aggrieved by the said dismissal of suit, the petitioners have preferred Appeal No.78 of 2009. In the said appeal, which is as per submissions of learned counsel for the petitioners is at the stage of final hearing, the petitioners intend to produce three documents namely certified copy of the judgment in RTS Appeal No.44 of 1997; a letter dated 27th August, 2018 issued by Talati of Village Omali, Taluka Chiplun and a certified copy of Mutation Entry No.817. Learned counsel for the petitioners submitted that, said documents are necessary for final adjudication of the appeal and production of these documents will not cause any harm or prejudice to the respondents. In support of her contention, she relied on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. K.V. Lakshman in Civil Appeal No.920 of 2008, decided on June 29, 2016.

3. It is to be noted here that, the certified copy of the judgment in RTS Appeal No.44 of 1997 was very much available with the petitioners at the time of recording of their evidence by the Trial Court or rather before that. A letter issued by Talati of Village Omali dated 27th August, 2018 and certified copy of Mutation Entry No.817 upon which the petitioners intends to rely are being produced by the petitioners with a view to fill up lacuna in their evidence. Even otherwise it appears that, the said documents have no direct relevance to the issue involved in the suit filed by the petitioners.

In view thereof, the decision relied upon by the learned counsel for

the petitioners is not applicable to the present case, as the facts mentioned therein are different than the case in hand.

4. A useful reference at this stage can be made to the decision of the Constitution Bench of the Hon'ble Supreme Court in case of Waryam Singh and Another Vs. Amarnath and Another, reported AIR 1954 Supreme Court 215, wherein it is held that, the power of superintendence conferred by Article 227 is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors.

Assuming for the sake of arguments that, the Appellate Court has committed an error in rejecting the application preferred by the petitioners under Order 41 rule 27 of the Code of Civil Procedure, 1908, in view of this Court, interference in it is not warranted under Article 227 of the Constitution of India.

The petition being devoid of merits, is accordingly dismissed.

[A.S. GADKARI, J.]