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S.A.No.431 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 13 / 08 / 2024

JUDGMENT PRONOUNCED ON : 22 / 10 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.431 OF 2021

Kalarani ... Appellant / 1st Respondent /
Plaintiff

Versus

1.Kathirvel ... 1st Respondent / Appellant /
2nd Defendant

2.Krishnan ... 2nd Respondent/ 2nd Respondent /
1st Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside Judgment and Decree dated October 6, 2020 made by the Principal District Court, Namakkal in A.S.No.80 of 2019 partly allowing the Judgment and Decree dated December 11, 2017 made in O.S.No.111 of 2012 by the learned Subordinate Judge, Namakkal.

For Appellant : Mr.S.Saravana Kumar
For Respondents : Served – No appearance

J U D G M E N T



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This Second Appeal is directed against the Judgment and Decree dated October 6, 2020 made by the 'Principal District Court, Namakkal' ['First Appellate Court' for short] in A.S.No.80 of 2019, whereby the Judgment and Decree dated December 11, 2017 of the Subordinate Court, Namakkal ['Trial Court' for short] made in O.S.No.111 of 2012 was partly modified. Dissatisfied with the First Appellate Court's Judgment and Decree, the plaintiff has preferred this Second Appeal.

2.In the Original Suit, the appellant herein is the plaintiff, the 1st respondent herein is the 2nd defendant, and the 2nd respondent herein is the 1st defendant. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

Plaintiff's Case in Brief:

3.One Kali Gounder had two sons, Muthusamy and Seerangan. Muthusamy had one son, namely the first defendant, and one daughter, namely Kamali. The Suit Properties are ancestral and joint family properties of Muthusamy (plaintiff's grandfather). It consists of 19 items, out of which, majority were originally ancestral and joint family properties allotted to the share of Muthusamy vide Registered Partition Deed dated July 12, 1972 as 'A' Schedule properties; the rest were



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purchased by Muthusamy from and out of the income derived from the allotted ancestral and joint family properties, and they were enjoyed by him as ancestral and joint family properties. The said Kamali, who got married before the year 1989, predeceased Muthusamy. Hence, the said Kamali has no right in the Suit Properties which are ancestral and joint family properties. The plaintiff is the daughter of the first defendant while the second defendant is first defendant's son. After the demise of Muthusamy, the Suit Properties are enjoyed as joint family properties by the plaintiff and the defendants, wherein the plaintiff is entitled 1/3 share. When the plaintiff approached the defendants on May 25, 2012 for partition, they refused for the same. Hence, the Suit for partition.

Defendants' Case in Brief:

4.First defendant was set *ex-parte* before the Trial Court. No Written Statement was filed on his side.

5.The second defendant filed Written Statement, wherein it is averred that not all the items of the Suit Properties are ancestral and joint family properties and that the plaintiff ought to prove that Kamali and first defendant are the only children of Muthusamy. Further, he states that his father's sister, namely Muthammal predeceased his father before the year 1989. He denies that after the demise of grandfather - Muthusamy, the



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plaintiff and the defendants are jointly enjoying the Suit Properties and accordingly, he asserts that the Court fee paid under Section 37 (2) of the Tamil Nadu Court Fees and Suit Valuation Act, 1955 is incorrect.

5.1.According to the second defendant, certain properties were purchased by Muthusamy as his self-acquired and separate properties. On December 23, 2005, Muthusamy executed a registered Settlement Deed in favour of second defendant, pertaining to his self-acquired and separate properties as well as some of the properties allotted to him in Schedule 'A' under the registered Partition Deed dated July 12, 1972. Upon getting married, the plaintiff has relinquished her right in the ancestral and joint family properties. Further, whatsoever, the plaintiff has no right to seek partition in the properties bequeathed by Muthusamy upon the second defendant vide registered Settlement Deed dated December 23, 2005. Further, the Suit is bad for non-joinder of necessary parties. Accordingly, he prayed to dismiss the Suit.

Trial Court:

6.On these pleadings, the Trial Court framed the following issues:

“(i) Whether the plaintiff is entitled to 1/3 shares from the



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Suit Properties as prayed for?

(ii) To what other reliefs? ”

7.At trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 was marked. On the side of the defendants, second defendant was examined as D.W.1 and Ex-B.1 to Ex-B.10 were marked.

8.After full trial, the Trial Court found that the Item Nos. 14 and 16 of Suit Properties are self-acquired properties of Muthusamy and accordingly, the registered Settlement Deed dated December 23, 2005, executed by Muthusamy in favour of second defendant, is valid in respect of Item Nos. 14 and 16 and hence, the plaintiff has no right to seek partition in Item Nos. 14 and 16. Further held that except for Item Nos. 14 and 16, the plaintiff is entitled to 1/3 share in all the other items as prayed for. Accordingly, dismissed the Suit *qua* Item Nos. 14 and 16 and decreed the Suit as prayed for *qua* other items.

First Appellate Court:

9.Aggrieved by the Judgment and Decree dated December 11, 2017 of the Trial Court, the second defendant preferred appeal before the First Appellate Court under Section 96 of the Code of Civil Procedure,



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1908 ['C.P.C' for short]. During the pendency of the said appeal, the second defendant, as appellant before the First Appellate Court, filed an application under Order XLI Rule 27 of C.P.C praying to receive the certified copy of the registered Sale Deed dated August 29, 1980 and to permit him to lead additional oral evidence.

10.First Appellate Court heard the said Order XLI Rule 27 Application along with the main appeal. Then, vide its final Judgment dated October 6, 2020, it partly allowed the said application and marked the certified copy of the registered Sale Deed dated August 29, 1980 as Ex-C.1 and denied the prayer for permission to give additional oral evidence by observing that in view of Section 91 and 92 of the Indian Evidence Act, 1872, oral evidence is not necessary.

11.Considering Ex-C.1 - Sale Deed dated August 29, 1980, the appeal was partly allowed vide the same Judgment by holding that the Item No.19 of Suit Properties is also self-acquired property of Muthusamy and hence, the registered Settlement Deed dated December 23, 2005 executed in favour of the second defendant is valid in respect of not only Item Nos. 14 and 16 but also Item No. 19. Accordingly, it held that the plaintiff is entitled to 1/3 share in all items of the Suit Properties except for Item Nos.14,16 and 19. To that extent, it modified the Judgment and



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Decree of the Trial Court.

Substantial Question of Law:

12. Aggrieved with the Judgment and Decree dated October 6, 2020 of the First Appellate Court, the second defendant filed this Second Appeal on April 4, 2021 and the same was admitted on July 5, 2021. This Court deems fit to extract the Admission Board Order dated July 5, 2021 hereunder:

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M.SUNDAR, J

Captioned second appeal arises out of a suit for partition and separate possession. A plaint was presented on 30.05.2012 and this plaint was taken on file as O.S.No.111 of 2012 on the file of the 'Subordinate Judge's Court, Namakkal' [hereinafter 'trial Court' for the sake of convenience and clarity]. There were 19 items of properties in all, in the plaint. Out of 19 items, preliminary decree for partition was made with exception of item Nos.14 & 16. Second defendant alone carried the matter in appeal by way of a regular first appeal under Section 96 of 'The Code of Civil Procedure, 1908' ['CPC' for brevity] vide A.S.No.80 of 2019 on the file of the 'Principal District Judge's Court, Namakkal' [hereinafter 'First Appellate Court' for the sake of convenience and clarity] which after full contest partly allowed the appeal in and by judgment and decree dated 16.10.2020.

2. Reverting to the suit that was presented on 30.05.2012, it was filed by one Kalarani (appellant before this second appeal Court) arraying her father Krishnan as first defendant and brother Kathirvel as second



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defendant.

3.As already alluded to supra, second defendant alone carried the matter in appeal and therefore, Mr.I.Abrar Md. Abdullah, learned counsel for the appellant very fairly submits that the plaintiff does not raise any issue with regard to item Nos.14 & 16 which were excluded by trial Court and that she is now concerned only with Item No.19.

4.This takes us to what unfurled in the First Appellate Court. In the First Appellate Court, second defendant filed an application in I.A.No.2 of 2020 under Order XLI Rule 27 of CPC with a prayer to bring additional evidence i.e., sale deed dated 29.08.1980 in an attempt to demonstrate that item No.19 is a self acquired property. The said IA was taken up along with the main appeal which is in accordance with the procedure to be followed as laid down by Hon'ble Supreme Court. First Appellate Court after discussion has permitted the marking of sale deed dated 29.08.1980 as Ex.C1, but has disallowed any oral evidence being let in. This has been done by placing reliance on Sections 91 & 92 of 'The Indian Evidence Act, 1872' [hereinafter 'said Act' for the sake of convenience and clarity].

5.Learned counsel for appellant submits that Section 92 of said Act is not without exceptions and when a document is pressed into service at First Appellate Court stage by way of additional evidence by taking recourse under Order XLI Rule 27, it is only appropriate that the adversary is given an opportunity qua contentious disputation.

6.The following substantial question of law arises:

'In a first appeal under Section 96 of CPC when recourse is taken under Order XLI Rule 27, when a new document is introduced, can the same be permitted to



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be marked as exhibit and decree of the trial Court be disturbed on the strength of the same without oral evidence and without giving opportunity to the adversary, which is raising disputation qua the document which has been pressed into service?"

7. Admit.

8.Though obvious, it is made clear that the above is substantial question of law at the admission stage and therefore, is subject to rights of respondents under Sub-Section (5) of Section 100 of CPC.

9.Notice to respondents returnable in six weeks i.e., 16.08.2021. Private notice permitted. Private notice through all available electronic modes of communications also permitted.

10. List on 16.08.2021. "

(emphasis supplied by this Court)

13.Despite service of notice on both the defendants, they have not appeared before this Court to contest the Second Appeal.

14.Further, from the above Admission Board Order, it is clear that the contentions of the appellant in this Second Appeal are only with respect to Item No.19 of Suit Properties.

Arguments:

15.Mr.S.Saravana Kumar, learned Counsel appearing for the plaintiff (appellant herein) would argue that the First Appellate Court erred in marking the registered Sale Deed dated August 29, 1980, sought to be



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marked as additional evidence by the second defendant through an application under Order XLI Rule 27 of C.P.C, as Ex-C.1, by not offering an opportunity to the plaintiff to rebut the same. The First Appellate Court, while allowing the Order XLI Rule 27 Application, ought to have remanded the matter to the Trial Court, either under Order XLI Rule 23 or Order XLI Rule 25 of C.P.C. The First Appellate Court failed to frame necessary issue(s) to determine the character of the Suit Properties. The First Appellate Court erred in relying on Ex-C.1, which is marked without an opportunity to the plaintiff to rebut the same, to conclude that Item No.19 is self-acquired property of Muthusamy. First Appellate Court erred in holding that oral evidence can be excluded for Ex-C.1 as per Sections 91 and 92 of the Indian Evidence Act, 1872. First Appellate Court failed to follow the procedure contemplated under Order XLI Rule 28 of C.P.C after the allowing the Order XLI Rule 27 Application which causes much prejudice to the plaintiff. Accordingly, he prayed to allow the Second Appeal.

16.He would rely on the following Judgments of the Hon'ble Supreme Court in support of his contentions:

- (i) ***Akilesh Singh's Case*** - [Akilesh Singh alias Akhileshwar Singh -vs- Lal Babu Singh and others,



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reported in (2018) 4 SCC 659].

- (ii) **Parthasarathy's Case** - [Corporation of Madras and another -vs- Parthasarathy and others, reported in (2018) 9 SCC 445].

Discussion and Decision:

17. Heard the learned Counsel for the plaintiff (appellant herein) and perused the materials available on record.

18. The Suit Properties consist of 19 items, out of which, according to the plaintiff, majority were originally ancestral and joint family properties allotted to the share of Muthusamy vide Registered Partition Deed dated July 12, 1972 as 'A' Schedule properties; the rest were purchased by Muthusamy from and out of the income derived from the ancestral and joint family properties allotted to him, and enjoyed as ancestral and joint family properties. According to the defendants, not all the items of the Suit Properties are ancestral and joint family properties. The Trial Court held that the registered Settlement Deed dated December 23, 2005, executed by common ancestor - Muthusamy in favour of second defendant, is valid with respect to Item Nos. 14 and 16, as Item Nos. 14 and 16 are his self-acquired and separate properties; that the other items of Suit Properties are ancestral and joint family properties in which the plaintiff has right to partition. Accordingly, decreed the Suit as prayed for *qua* all



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the items of Suit Properties other than Item Nos. 14 and 16. Notably, the plaintiff accepted the said decision of the Trial Court which is evident from the fact that she neither preferred an appeal nor a cross objection, nor did she raise an objection under Order XLI Rule 22 of C.P.C [See ***Ravinder Kumar Sharma -vs- State of Assam***, reported in ***(1999) 7 SCC 435***]. Further, the plaintiff side has fairly agreed that their contentions in this Second Appeal are limited to Item No.19 of Suit Properties (See Paragraph No.14 *supra*). Thus, the findings in respect of Item Nos.14 and 16 have attained finality and need not be dealt with in this appeal.

19. Thereafter, the second defendant filed an appeal under Section 96 of C.P.C on July 25, 2018 before the First Appellate Court, assailing the Judgment and Decree of the Trial Court. The same was taken on file on December 2, 2019. Notices were served on the plaintiff and the first defendant. Both of them appeared through Counsels. Pending the appeal, the second defendant filed an application under Order XLI Rule 27 of CPC on March 16, 2020 before the First Appellate Court and the same was taken on file as Interlocutory Application No.2 of 2020 on March 16, 2020. The plaintiff, as respondent 1 therein, filed counter on September 18, 2020. The said Interlocutory Application was heard along with the main appeal by the First Appellate Court. The First Appellate Court, vide its



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final Judgment dated October 6, 2020, allowed the said Order XLI Rule 27 Application in part, marking the registered Sale Deed dated August 29, 1980 as Ex-C.1 while rejecting the prayer *qua* permission to lead additional oral evidence and then, vide the same Judgment, by placing reliance on Ex-C.1, disposed of the main appeal partly in favour of the second defendant who was the appellant before it.

20.The course adopted by the First Appellate Court in hearing the said Order XLI Rule 27 Application along with the main appeal is, no doubt, the right procedure. In this regard, it is apposite to cite ***Ibrahim Uddin's Case*** [Union of India vs. Ibrahim Uddin and Another, reported in (2012) 8 SCC 148], wherein the Hon'ble Supreme Court has held as hereunder:

“52.Thus, from the above, it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of the final hearing of the appeal at a stage when after appreciating the evidence on record, the court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non-application of mind, as to whether such evidence is required



to be taken on record to pronounce the judgment or not, remains inconsequential/inexecutable and is liable to be ignored.”

21.In this case, the First Appellate Court has dealt with the Order XLI Rule 27 Application in Paragraph Nos.18 to 20 of its final Judgment. It has observed therein that the registered Sale Deed dated August 29, 1980 was not within knowledge of the second defendant and that, though the plaintiff and first defendant, as respondents before it, objected to allow the petition, the said Sale Deed is essential in order to arrive at a just conclusion. Accordingly, it allowed the Order XLI Rule 27 Application and it itself marked the same as Ex-C.1 without any recourse to Order XLI Rule 28 of C.P.C.

22.As stated *supra*, it is trite law that Order XLI Rule 27 Application should be heard along with the main appeal. While appreciating the evidence on record, if the Appellate Court deems it appropriate to dismiss the Application under Order XLI Rule 27, although not obligatory, it is desirable that the dismissal Order is included in its final judgment [See *Selvaraj's case* cited *infra*]. But if the Appellate Court thinks fit to allow the Order XLI Rule 27 Application, the Appellate Court shall pass a separate Order allowing the application and then resort to the



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procedure under Order XLI Rule 28 of C.P.C. This procedure of passing separate Order while allowing Order XLI Rule 27 Application, can be waived under certain circumstances, such as (i) when the parties to the Suit consent to mark the documents sought to be marked [See **Selvaraj's case** cited *infra*], (ii) when sufficient pleadings and/or evidence is already available on record to appreciate the additional evidence sought to be marked such that no oral or documentary evidence is further required, (iii) when the document sought to be marked as additional evidence is of unimpeachable character, such that in the facts and circumstances of the case, it cannot be disputed by the other side at all.

23.In the Judgment of this Court dated April 28, 2015 passed in **Selvaraj's case** [Selvaraj -vs- Ravichandran and others - Second Appeal (MD) No. 653 of 2014], the learned Single Judge, namely Hon'ble Justice P.R.Shivakumar, by placing reliance on **Ibrahim Uddin's Case** (supra) ; **K.R.Mohan Reddy's Case** [K.R.Mohan Reddy -vs- Network Inc., reported in (2007) 14 SCC 257] ; and **Jayamoorthy's Case** [Jayamoorthy and others -vs- Palani and others, reported in (2013) 7 MLJ 471], has held as hereunder:

“11.Of course, the learned lower Appellate Judge has adopted the correct procedure in hearing the application with



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the Appeal. But it shall not be desirable to incorporate the order allowing such an application in the judgment itself. There cannot be any quarrel over the proposition that, if the Court comes to the conclusion that an application under Order 41 Rule 27 C.P.C deserves to be dismissed, the same can be incorporated in the judgment and the judgment in the appeal on merits may be pronounced. When the Court comes to the conclusion that such an application is to be allowed, the normal procedure is to pass a separate order, follow the procedure for recording additional evidence and thereafter decide the appeal after giving an opportunity to the parties to advance arguments based on the evidence already available and the additional evidence recorded in the appeal. This procedure can be dispensed with under only one circumstance, that is when the parties consent for not only allowing the application but also for marking those documents, without there being any necessity to examine any witness in proof or disproof of such document. In such cases alone, the additional documents can be marked as additional evidence and the Appellate Court can proceed with the pronouncement of the judgment incorporating the order allowing the application under Order 41 Rule 27 C.P.C and also the factum of marking those documents by consent and of hearing the arguments advanced on both sides on the basis of the additional documents also.”

23.1.While this Court concurs with the other views of the learned Single Judge, this Court is of the opinion that parties’ consent cannot be the sole exception to Order XLI Rule 28 of C.P.C. As stated *supra*, this Court is of the considered view that there can also be other



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exceptions to Order XLI Rule 28, depending upon the specific facts and circumstances of the cases.

24. In the instant case, there is no serious dispute between the parties that Item Nos.1 to 12 are ancestral and joint family properties allotted to Muthusamy under Ex-A.1 - Registered Partition Deed. According to the plaintiff, the Item Nos.14, 15 and 16 of Suit Properties are also joint family properties purchased by Muthusamy from and out of the income derived from the other ancestral and joint family properties. According to the second defendant, the properties covered under Ex-B.1 - registered Settlement Deed, executed in his favour by Muthusamy, are all separate and self-acquired properties of Muthusamy. The Trial Court in Paragraph No. 14 of its Judgment, observed that though the registered Sale Deed dated August 28, 1980, was referenced in Ex-B.1, the defendants failed to establish which items of the Suit Properties are covered under the said Sale Deed. Consequently, the Trial Court determined that, except for Item Nos. 14 and 16, the plaintiff is entitled to 1/3 share in all other items of the Suit Properties. Relevant extract of the Trial Court's Judgment is hereunder:

“14.மேலும் பி.சா.ஆல் முத்துசாமி கவுண்டர்
மேலும் 29.8.1980 தேதியில் அனந்தராமன்



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செட்டியார் வகையராவிடமிருந்து கிரையம் ஏற்பட்ட பத்திரம் சார்பதிவாளர் அலுவலகத்தில் பதிவு செய்யப்பட்டுள்ளது என்று கூறப்பட்டுள்ளதே தவிர மேற்படி அனந்தராமன் செட்டியார் வகையராவிடமிருந்து எந்த சர்வே எண்ணில் எவ்வளவு விஸ்தீரணம் உள்ள சொத்துக்கள் கிரையம் பெறப்பட்டது என்பதை பிரதிவாதிகள் தரப்பில் நிருபணம் செய்ய தவறியுள்ளனர். இந்நிலையில் அனந்தராமன் செட்டியார் வகையராவிடமிருந்து முத்துசாமி கவுண்டர் கிரையம் பெற்ற சொத்துக்கள் எந்த அயிட்டிச் சொத்துக்கள் என்பது பிரதிவாதிகள் தரப்பில் நிருபணம் செய்யப்படவில்லை. இந்தச்சூழ்நிலையில் தாவாவில் குறிப்பிட்டுள்ள 14 மற்றும் 16 அயிட்டிச் சொத்துக்கள் நீங்கலாக இதர சொத்துக்களில் வாதி தன் தாவாவில் கோரியபடி 1/3 பங்கு பாகம் பெற அருகதையுடையவர் என்றே தீர்மானித்து மேற்கண்ட 1வது எழுவினாவிற்கு இந்நீதிமன்றம் தீர்வு காண்கிறது.”

25.Be that as it may, as stated *supra*, the said Sale Deed dated August 29, 1980 was subsequently produced through an Order XLI Rule 27 Application before the First Appellate Court. Perusal of the said Sale Deed / additional evidence would reveal that, Item No. 19 of Suit Properties, which remains the core issue in this matter, was purchased under it by Muthusamy for a sale consideration of Rs. 4,600/- on August



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29, 1980, that is after the execution of Ex-A.1 - Registered Partition Deed.

Contentions in this matter, revolve around the question, whether Muthusamy purchased the property covered under the said Sale Deed i.e., Item No. 19, from and out of the income derived from ancestral and joint family properties allotted to him in Schedule 'A' under Ex-A.1. If answered in the affirmative, Item No.19 would gain ancestral character and the plaintiff would gain right to partition over it. If not, Item No. 19 would be self-acquired property of Muthusamy and consequently, Ex-B.1 - registered Settlement Deed executed by Muthusamy in favour of the second defendant would be valid in respect of Item No.19. To decide on the question, the said Sale Deed / additional document is essential and hence, the First Appellate Court is right in concluding so, but it has failed to follow the right procedure thereafter.

26. Whenever an application under Order XLI Rule 27 is allowed, recourse to Order XLI Rule 28 is a must. The First Appellate Court cannot by itself mark the additional evidence. The First Appellate Court ought to have made recourse to Order XLI Rule 28 and ought to have marked the said Sale Deed / additional evidence through the second defendant or person claiming through second defendant [See *Selvaraj's case* (cited *supra*)]. If not, the First Appellate Court, after allowing the



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Order XLI Rule 27 Application, ought to have remanded either the entire matter to the Trial Court under Order XLI Rule 23 of CPC, or the matter *qua* the additional evidence to the Trial Court while retaining the main appeal for the purpose of recording evidence under Order XLI Rule 25 of C.P.C. Since the First Appellate Court failed to make recourse to Order XLI Rule 28, the other side *i.e.*, the plaintiff lost an opportunity to rebut the contentions of the defendants that are based on the additional document. Consequently, the plaintiff's valuable right to property which is a constitutional right under Article 300A of the Constitution of India, was jeopardized / exposed to risk. For ready reference, Order XLI Rule 28 is extracted hereunder:

“28.Mode of taking additional evidence - Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the Appellate Court.”

27.The First Appellate Court would rely on Sections 91 and 92 of the Indian Evidence Act, 1872 to substantiate its decision. Sections 91 and 92 are not applicable to the instant case as, in this case, as stated



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supra, the primary concern is whether the Item No.19 was purchased through income derived from ancestral and joint family properties or not.

Leading oral / documentary evidence to determine the said question would not be a bar under Section 91 and 92 of the Indian Evidence Act, 1872.

28. In a nut shell, this Court is of the considered view that the procedure adopted by the First Appellate Court in partly allowing the Order XLI Rule 27 Application vide its final Judgment, thereby denying opportunity to the plaintiff to rebut the additional evidence sought to be marked is an erroneous approach causing prejudice to the parties and against the principles of natural justice and therefore, not sustainable in law.

29. The Substantial Question of Law is answered accordingly in favour of the plaintiff (appellant herein).

Conclusion:

30. Resultantly, the Second Appeal is allowed in the following terms:

- (i) The Judgment and Decree dated October 6, 2020 of the First Appellate Court is hereby set aside;
- (ii) The matter (including I.A.No.2 of 2020 in



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A.S.No.80 of 2019 on the file of the First Appellate Court) is remitted to the First Appellate Court for fresh adjudication duly on merits *qua* Item No.19 of the Suit Properties. Needless to mention, the observations made by this Court are only for the purpose of disposing of this Second Appeal. The First Appellate Court shall consider the matter *qua* Item No.19 afresh duly on merits uninfluenced by the observation made by this Court on the merits of the case;

(iii) On receipt of a copy of this judgment, the First Appellate Court shall issue notice to both the parties, fix the hearing date and pass judgment as stated *supra* in para 30(ii);

(iv) If the application under Order XLI Rule 27 of C.P.C (I.A.No.2 of 2020) is to be allowed, the First Appellate Court shall make recourse to Order XLI Rule 28 of C.P.C subject to the exceptions as stated *supra*;



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(v) The plaintiff (appellant herein) is entitled for refund of Court Fee as per rules;

(vi) No Costs.

(vii) Registry is directed to consign the Records to the First Appellate Court within 15 days from today;

(viii) Registry is directed to send a copy of this Judgment in an expeditious manner, so as to enable the First Appellate Court to dispose the matter as early as possible.

22 / 10 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

1.The Principal District Judge
Principal District Court
Namakkal.

2.The Subordinate Judge
Subordinate Court
Namakkal.



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