



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2026

CORAM

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

C.M.P.No. 20708 of 2026

IN

S.A.No. 236 of 2021

1. Sardou Parasuraman
S/o. Late Samikannu
2. Sardou Saraswathi
W/o. Sardou Parasuraman

... Petitioners/Appellants

Vs.

K.Natarajan (Deceased)
S/o. Late Krishnan @ Krishnaswamy

1. K.Vijayalakshmi (Given up)
wife of Karunanithi
2. R.Rama Devi (Given up)
wife of late Palanirajan
3. P.Varman (Given up)
son of Late Palanirajan
4. P.Yasoda (Given up)
Daughter of late Palanirajan
5. P.Kamini (Given up)



Daughter of Late Palanirajan

6. Sumitha
D/o. Late K.Natarajan
7. Anandakrishnan
S/o. Late K.Natarajan

... Respondents/Respondents

PRAYER: This Petition filed under Order XLI Rule 27 of Civil Procedure Code, to receive the additional documents described in the List of documents appended hereto as additional evidence in S.A.No. 236 of 2021.

For Appellant	: Mr.N.Manoharan for Mr.N.Ganesh
For RR 6 & 7	: Mr.C.Uma Shankar

ORDER

This Petition has been filed under Order XLI Rule 27 of the Code of Civil Procedure by the appellants/plaintiffs.

2. Mr. N. Ganesh points out that the consistent case of the appellants/plaintiffs is that they are French nationals and are governed by



the provisions of the French Code of Civil Procedure. He draws my attention to the averment made in the plaint as well as in the grounds of the regular appeal and in the Second Appeal that the plaintiffs are French nationals and are governed by French law, not Indian law.

3. On the last occasion, after hearing both parties at length, I pointed out that no application under Order 41 Rule 27 of the Code of Civil Procedure had been presented. Consequent to the order passed on that day, the application under Order XLI Rule 27 was moved. This Court does have the option under Order 41 Rule 25 to call for a finding from the Lower Appellate Court. However, taking into consideration Section 107 of the Code of Civil Procedure, which confers as much power as that of the trial Court, on this Court, and considering the age of the first appellant, who is a nonagenarian (94 years old), this Court has decided to record evidence.

4. Furthermore, both plaintiffs are not residents of India and are currently stationed in France. These are residing in Versailles. Therefore, Mr. N. Ganesh was called upon to ensure that the second appellant be present online. Hence, the matter was listed today.



5. When an application under Order 41 Rule 27 is allowed, the defendants should be given an opportunity under Order 41 Rule 28 to let in rebuttal evidence. The documents filed by Mr. N. Ganesh are

(i) extracts of the family record maintained by the Republic of France,

(ii) a certificate of nationality issued by the Court of First Instance in Amiens, and

(iii) the passport issued by the Republic of France. These are all documents maintained by the public authority.

6. The objection of Mr. Uma Shankar is that the plaintiffs are attempting to raise a new plea in the Second Appeal and that it is an attempt to fill the lacuna for existence in that case.

7. A perusal of the Judgment of the court below would indicate that there is some merit in the argument of Mr. Uma Shankar. However, a careful perusal of the pleadings, grounds of appeal, and grounds of second appeal indicates that the consistent case of the plaintiffs is that they are French nationals governed by French law. The defendants are not taken by surprise as the original first defendant, who was a lawyer himself, had conceded that the first plaintiff is a French national, but only



questioned the status of the second plaintiff. The issue of nationality of the plaintiffs is crucial in this proceeding.

8. Let us look at the law on the point. An application under Order XLI Rule 27 of the Code of Civil Procedure permits the party to adduce additional evidence. This is an exception to the general rule that the appellate court must decide the case on the basis of the records adduced before the Trial court. Yet in certain circumstances, the Code permits allowing of such an application.

9. Under three conditions, the court can allow an application under Order XLI Rule 27. They are

(i) improper refusal to admit evidence that ought to have been admitted.

(ii) non production on account of the additional evidence not being within their knowledge or could not have been adduced despite due diligence, and

(iii) the appellate court itself requires production of the documents to enable it to pronounce the judgment.

10. The submission of Mr.C.Uma Shankar certainly attracts Order



XLI Rule 27(1)(a) and Order XLI Rule 27(1)(aa). However, he has not taken note of the power available to this court under Order XLI Rule 27(1)(b). While Order XLI Rules 27(1)(a) and 27(1)(aa) are at the instance of the party, the requirement under Order XLI Rule 27 (1)(b) is triggered by this Court in order to pronounce a satisfactory judgment. If the appellate court requires certain document(s), it can certainly allow the application.

11. The only bar being that an additional evidence cannot be allowed to fill up the gaps or patch up the weakness in the petitioner's case. The issue that has been projected by Mr.N.Manoharan is that the parties being French citizens, as pleaded by them in the plaint, grounds of first appeal and grounds of second appeal, the courts below ought to have considered that aspect first and looked into other aspects later. This is because he relies upon a Division Bench judgment of this court which has pointed out that renoncants are governed by French laws and the property purchased by the couple during the subsistence of marriage is treated as a community property.

12. I have already pointed out that no prejudice is being caused to the parties as this has been a consistent case from the date of presentation



of the plaint. The documents that are sought to be received are not those prepared by the plaintiff or the defendant, but are the records maintained by the Sovereign State. The documents that are being received aligns with the other original pleadings of the plaintiff. A fresh case or a new defence is not being raised.

13. Therefore, the technical objection raised by Mr. Uma Shankar stands rejected. The evidence of Sardou Saraswathi will be recorded by this Court. The records will be received. The respondents can present them rebuttal evidences as required under Order XLI Rule 28.

14. This Civil Miscellaneous Petition stands allowed.

Vsg/nl

06.08.2026
(2/2)

V. LAKSHMINARAYANAN , J.

vsg



WEB COPY



C.M.P.No. 20708 of 2026
IN
S.A.No. 236 of 2021

06.08.2026
(2/2)