



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (MD) Nos.1119 and 1120 of 2016 (PD)
and
C.M.P. (MD) .Nos. 5612 and 5613 of 2016

Pappayee Ammal

.. Petitioner in both petitions

Vs.

1.Velusamy

2.Palaniammal

.. Respondents in both petitions

Common Prayer : These Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the judgment and decree, dated 15.02.2016, made in I.A.Nos.172 and 173 of 2015 in A.S.No.31 of 2012 on the file of the Principal Sub Court, Karur.

For Petitioners : Mr.T.Antony Arul Raj

COMMON ORDER

These revisions are directed against the order passed by the learned Principal Sub Judge, Karur in I.A.Nos.172 and 173 of 2015 in A.S.No.31 of 2012 in O.S.No.369 of 2009.

2. The petitioner in these revisions has filed a suit for declaration and permanent injunction. After contesting, the suit was decreed on 28.09.2011. Aggrieved over the judgment and decree, the first respondent preferred an appeal before the learned Principal Sub Judge, Karur in A.S.No.31 of 2012. Pending appeal, the first respondent filed two applications, I.A.No.172 of 2015 and I.A.No.173 of 2015 to summon the Executive Officer, Punjai Pugalur Town Panchayat, Velayuthampalayam, Karur District to examine him as witness for marking additional documentary evidence. Both applications have been allowed by the Appellate Court. Aggrieved over the order, the present revisions are filed.

3. Mr.T.Antony Arul Raj, learned counsel for the revision petitioner would submit that the Appellate Court ought to have taken up the application filed under Order 41 Rule 27 along with the appeal, however, in this case, the interim applications were



4. A similar question arose, whether the Revisional Jurisdiction under as per Section 115 C.P.C. can be invoked to consider the order passed under Order 41 Rule 27, when the appeal was pending for final hearing before the appropriate Appellate Court. The Hon'ble Supreme Court in **Gurudev Singh and others v. Mehnga Ram and another** reported in **1997(6) SCC 507**, in paragraph-2 has held as follows:

"2. We have heard learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order XLI, Rule 27(b), Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a handwriting expert. The High Court in the impugned order exercising jurisdiction under Section 115 CPC took the view that the order of the appellate court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should not have interfered with the order which was within the jurisdiction of the appellate court. The reason is obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order XLI Rule 27 specially clause(b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in the High Court should not have felt itself convinced that the order was without jurisdiction. Only on this hort question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court. In the result, the Additional District Judge, Ferozepur shall not decide the appeal on its own merits. We make it clear that the order of the learned Additional District Judge, Ferozepur dated 12.12.1995 shall now be complied with, subject to the liberty reserved to the respondent as aforesaid."

5. The same view was taken by the Supreme Court in <https://hcservicesequitesgovt.in/hcservices> reported in **2001(1) SCC 309**. This Court is of the opinion, the decisions squarely apply to the case on hand.



6. In the result, these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

7. It is needless to say that the Appellate Court shall dispose the appeal on merits, in accordance with law, without being influenced by any other observations made in the impugned order.

No Costs.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To
The Principal Subordinate Judge, Karur.

+1cc to Mr.T.Antony Arulraj, Advocate Sr.No.30341

sm:GSV-PM:19.07.2016:3P/3C

C.R.P (MD) Nos.1119
and 1120 of 2016 (PD)
13.06.2016