

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
Civil Revision Petition Nos.3225, 3255, 3274, 3275
and 3276 of 2016

COMMON ORDER:

In a first appeal arising out of a preliminary decree for partition, the appellants in the first appeal took out five applications. The prayers in those applications were as follows:

“1) I.A.No.1712 of 2015 is filed to recall PW.1/1st appellant for adducing further evidence;

2) I.A.No.1713 of 2015 is filed for receiving the unregistered partition list dt.27.6.91 as additional evidence through DW.1;

3) I.A.No.1714 of 2015 is filed to examine the attesor of Ex.B.1 registered Will dt. 12.11.91;

4) I.A.No.1715 of 2015 is filed for framing additional issues with regard to plea of earlier partition pleaded by the defendants; and

5) I.A.No.1716 of 2015 is filed to recall PW.1 for the purpose of further cross-examination.”

2. All the five applications were dismissed by the lower Appellate Court by an order dated 11-04-2016. Therefore, the petitioners have come up with the present revisions, challenging the common order passed in all the five applications.

3. As seen from the relief sought in each one of the applications, the defendants virtually want a re-trial. They want reopening of the evidence, recalling of PW.1, recalling of DW.1, marking of a document through DW.1, examination of attesor of Ex.B.1 and for recalling of PW.1 for further cross-examination. In other words, the attempt of the petitioners is to catch up with what

they have probably lost completely. Therefore, the lower Appellate Court was justified in rejecting these applications.

4. Relying upon the decision of the Supreme Court in **State of Rajasthan v. T.N. Sahani and others**^[1], it is contended by the learned counsel for the revision petitioners that an application under Order XLI Rule 27 of the Code of Civil Procedure has to be dealt with in a particular manner. Normally such an application should be taken up along with the final hearing of the appeal. The procedure clearly stipulated in Order XLI Rule 27, according to the learned counsel for the petitioners, has not been followed by the lower Appellate Court. But I did not agree. It is not a simple case of the petitioners seeking to file additional document under Order XLI Rule 27. The prayer in I.A.No.1713 of 2015 is actually for marking an unregistered partition list dated 27-06-1991, which was attempted to be marked even in the trial Court. But the trial Court did not mark it as an exhibit. Though there is no written order communicating the rejection of the document, the fact remains that an attempt was made to mark it in the trial Court. If an attempt is made before the trial Court unsuccessfully in respect of a document, no party can be allowed to mark such a document in an application under Order XLI Rule 27 at the stage of admission. Perhaps in cases where a document is not admitted for want of stamp duty etc, the party can pay stamp duty/rectify the defect and seek to mark the same in the appellate stage. This case does not fall under that category. Therefore, I see no justification to interfere with the common order passed by the lower Appellate Court.

5. Therefore, all the Civil Revision Petitions are dismissed. As

a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 15-07-2016

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[\[1\]](#) (2001) 10 Supreme Court Cases 619