

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 21-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.PD.No.850 OF 2016

Palanisamy

Petitioner

-VS-

1.Selvaraj

2.Marayammal

Respondents

Revision against the order, dated 17.12.2015, passed in I.A.No.10 of 2015 in A.S.No.34 of 2013 on the file of I Additional Subordinate Court, Erode.

For petitioner : Mr.M.Guruprasad
for M/s.R.Sushe

For respondents : Mr.N.Manokaran

ORDER

सत्यमेव जयते

Petitioner is the appellant in the first appeal and first defendant in the suit. First respondent/plaintiff filed a suit for partition. Petitioner, who is the first defendant in the suit, has taken a defence that he acquired title to the suit property, by virtue of a Will, dated 13.12.1991. During trial, he could not examine one of the attestors, as he was not well, but, examined his son as a witness. He also examined another witness, who witnessed the registration, as P.W.3. The trial Court has

decreed the suit against the appellant, as the Will was not proved as per Section 68 of the Indian Evidence Act. Against the said decree, the petitioner filed an appeal before the lower appellate Court. During the pendency of the appeal, he filed an application to receive additional documents and to call for the Sub-Registrar, who registered the Will, to let in additional evidence. The lower appellate Court has dismissed the application, on the ground that the petitioner was not diligent in bringing one of the attestors as a witness before the Court to prove the Will. The reason for non-production was stated to be the ill-health of the attesor. But, the petitioner has failed to produce medical certificates to prove the same. Since the petitioner has not taken steps to call the Sub-Registrar as a witness before the trial Court, the application to receive additional documents was held to be not maintainable. The lower appellate Court has also held that the attempt is belated and, accordingly, dismissed the application. Aggrieved over the order passed by the lower appellate Court, the petitioner has filed this revision.

2. According to the learned counsel for the petitioner, the reasons adduced by the lower appellate Court for dismissal of the application are indefensible in law. When the trial Court disbelieved Ex.B-6, WILL, the petitioner can prove the same only by producing the death certificates of the scribe and the attesor, by marking them as additional documents. Further, the order passed by the lower appellate Court in dismissing the application is contrary to the principles laid down by the judgment of the Hon'ble Supreme Court under Order 41 Rule 27 of the

Code of Civil Procedure.

3. Conversely, learned counsel for the respondents would submit that it is a well settled principle that a party, who is guilty of remissness in the lower Court, is not entitled to the indulgence of being allowed to let in further evidence. The inadvertence of the party or his inability to understand the legal issues involved or the wrong advice of the pleader or the negligence of the pleader or the party did not realise the importance of the document does not constitute a substantial cause. Therefore, according to the learned counsel, there is no sufficient ground for allowing the additional evidence before the Court, and, as such, the order passed by the lower appellate Court is very much legal and sustainable.

4. Heard both sides.

5. It is well settled by Order 41 Rule 27 (b) CPC, that if the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any substantial cause, it may allow such evidence or document to be produced or witness to be examined.

6. In the instant case, the petitioner has made diligent efforts to prove the WILL, by marking documents as well as adducing oral evidence through witnesses. It cannot be said that the petitioner was not diligent as a whole. Be that as it may, if a document is required for deciding the judgment or for any other substantial cause, it can be appreciated only at the time of hearing the appeal on merits or at the time of passing the judgment. It is a well settled proposition of law

that interlocutory application under Order 41 Rule 27 CPC shall be decided along with the appeal, as held by the Supreme Court in K.Venkataramiah v. Seetharama Reddy, AIR 1963 SC 1526. The very same principle has been reiterated by the Supreme Court in State of Rajasthan v. T.N.Sahani and Others, 2001 (10) SCC 619, wherein, it has been held that it is always open to the Court to look into the documents and, for that purpose, amended provision of Order 41 Rule 27 (b) CPC can be invoked. So, the application under Order 41 Rule 27 CPC should have been decided along with the appeal. In this context, the Supreme Court has observed as under :

"4....This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27 (b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal...."

7. In the case on hand, the lower appellate Court has decided the application even before pronouncing the judgment. In fact, the lower appellate Court should have decided the issue along with the appeal. The lower appellate Court ought to have considered as to whether there is any substantial cause involved in deciding the appeal by receiving additional documents and evidence and as to whether the satisfactory judgment can be passed without considering the additional evidence and additional documents, at the time of deciding the appeal. If the said

aspects are not considered or reasons are not recorded for the same, the petitioner will be deprived of his right to know as to why his application has been rejected. Such an act is also violative of the principles of natural justice.

8. Under the above circumstances, the order passed by the lower appellate Court, namely, I Additional Subordinate Court, Erode, in I.A.No.15 of 2015, dated 17.12.2015, is set aside. The said Court is directed to dispose of the application along with the appeal, as per the law laid down by the Supreme Court in Union of India v. Ibrahim Uddin, 2012 (8) SCC 148.

9. Civil Revision Petition is allowed accordingly. No costs. Consequently, the connected C.M.P.No.4734 of 2016 is closed.

Index : Yes/No
Internet : Yes/No
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21-11-2017

To

I Additional Subordinate Court,
Erode.

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M.GOVINDARAJ,J.

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