



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2017

CORAM :

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (MD) (PD) No. 824 of 2017

and

CMP (MD) No. 3664 of 2017

Joseph Paulraj

... Petitioner/3rd

Respondent/3rd Appellant

vs.

1. Mahalakshmi

... R1/Petitioner/Respondent

2. Selvam

3. Chellamuthu

4. Juius Karunakaran

5. Louis Joseph

6. Isac Mohanlal

7. Francis

8. Joshpine Mary Grace

9. Carolin Eucharistia

(R2 to R9 are given up since they are not contesting party)

... Respondents 2 to 9/R1, R2, R4 to R9 /
Appellants 1, 2, 4 to 9

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 13.03.2017 made in I.A.No.1 of 2016 in A.S.No.37 of 2015 on the file of the Additional District Judge, Palani.

For Petitioner : Mr. R. Vijayakumar

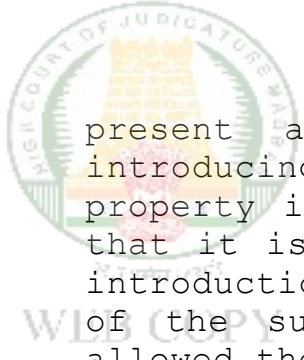
For Caveator : Mr. Anand Chandra Sekar

for M/s. Sarvabhauman Associates

O R D E R

The application filed under Order 41 Rule 27 read with Section 151 CPC to receive additional document was allowed pending disposal of the appeal.

2. Aggrieved by that, the 3rd appellant/3rd defendant has preferred the present revision petition on the ground that the lower appellate Court has entertained the application without application of mind and neglecting the fact that the attempt made by the plaintiff before the Trial Court to amend the pleadings was dismissed. While so, to circumvent and to fill up lacuna, the



present application at the appellate stage been filed by introducing new document to support her plea that the suit property is a self-acquired property contra to the original plea that it is their ancestral property. Unmindful of the fact that introduction of new documents will completely change the character of the suit at the appellate stage, the Appellate Court has allowed the application.

3.The learned counsel for the respondent submitted that there is no new plea submitted, but the consistent plea which was not properly projected at the trial stage has been sought to be agitated in the appeal through additional documents. In any event, if the Appellate Court considers the necessity and admissibility of the documents sought to be marked, at the time of the disposal of the appeal the same may be considered.

4.Recording the said submission, since there is procedural lapse in deciding the application independently without deciding the interlocutory application along with the appeal, the order dated 13.03.2017 made in I.A.No.1 of 2016 in A.S.No.37 of 2015 is set aside and the interlocutory application filed under Order 41 Rule 27 of C.P.C is remanded to the lower appellate Court with a direction to the lower appellate Court to take up the said application along with appeal at the time of final disposal of the appeal in A.S.No.37 of 2015.

With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Palani.

+1cc to M/s. R.VIJAYAKUMAR Advocate in SR. No.52879

+1cc to SARVABHAUMAN ASSOCIATES in SR. No.52866

NBI

JS/MR/SAR.3/17.05.2017/2P-4C

CRP(MD) (PD) No.824 of 2017
19.04.2017