

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P. (NPD) No. 2381 of 2018

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C.M.P. No. 14712 of 2018

1. Panjali
2. Jothi
3. Nesamani ..Petitioners

Vs.

1. Uma
2. Saravanan ..Respondents

Prayer: Civil Revision Petition against the fair and decretal order dated 23.04.2018 passed in I.A. No. 40 of 2017 in A.S. No. 38 of 2016 by the Principal Subordinate Court, Krishnagiri.

For Petitioners :: Mr.R. Agilesh

For Respondents :: Mr.T. Arivarasan

ORDER

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The Civil Revision Petition is filed as against the order dated 23.04.2018 passed in I.A. No. 40 of 2017 in A.S. No. 38 of 2016 by the Principal Subordinate Court, Krishnagiri.

2. Pending the appeal in A.S. No. 38 of 2016, the respondents herein filed I.A. No. 40 of 2017 under Order 41 Rule 27 CPC to permit them to let in additional evidence in the appeal, thereby enabling them to produce the additional documents stated in the application to be marked as exhibits on their side, which came to be allowed by the order under challenge. The reason assigned for filing the said I.A. was that the respondents were not able to produce the sale deed in respect of B schedule property and the patta issued in their favour. Apart from this, no other reasoning had been assigned as to why the respondents herein, in spite of due diligence, could not produce those documents before the Trial Court in time.

3. Order 41 Rule 27 CPC sub-clause (aa) is clear to the effect that whenever a party seeks to produce additional evidence, he is required to establish that, in spite of due diligence, the said evidence was neither within his knowledge nor could be produced, even after exercise of due diligence, at the time when the decree in the suit came to be passed.

4. The suit in O.S. No. 190 of 2013, filed by the respondents herein, is one for declaration of the Gift Deed dated 22.10.2012 as null and void and

for a consequential injunction, on the ground that they are the owners of the suit properties. When the respondents herein claimed ownership by virtue of a sale deed, which was also in their possession, even before the decree came to be passed, nothing prevented them from producing the same before the Trial Court. As such, it cannot be said that the documents, sought to be marked as additional evidence, were not within their knowledge nor were they available with them to be produced before the Trial Court. This was also not the reason assigned in the application filed under Order 41 Rule 27 CPC before the First Appellate Court. As such, the First Appellate Court is not justified in allowing the application only on the ground of granting an opportunity to the respondents herein to prove their case.

5. Learned counsel for the respondents herein also relied on the judgment of the Honourable Apex Court rendered in *Akhilesh Singh @ Akhileshwar Singh V. Lal Babu Singh and others reported in 2018 (3) CTC 883* and submitted that the application under Order 41 Rule 27 CPC could be allowed for the purpose of granting an opportunity to the parties to rebut the evidence and in view of rules of natural justice and fair play. The finding in the said judgment goes to show that the application for letting in additional documents was filed on the ground that the said documents came into existence after the decree of the Trial Court. There is no quarrel with regard

to the said proposition. If the documents sought to be produced as additional evidence, were not in the possession of the party filing the application under Order 41 Rule 27 CPC, then it is always open to the said party to produce the same in view of sub-clause (aa) of Order 41 Rule 27 CPC. In the instance case,

**M.S. RAMESH,J.**

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the respondents herein had knowledge of the documents and they were also in possession of the same, even before the decree came to be passed. As such, there cannot be any justification, whatsoever, for non-production of those documents before the Trial Court, before the decree came to be passed.

6. In view of the foregoing discussion, the order of the First Appellate Court permitting the respondents herein to let in additional evidence is opposed to the provision of sub-clause (aa) of Order 41 Rule 27 CPC. Hence, the order dated 23.04.2018 passed in I.A. No. 40 of 2017 in A.S. No. 38 of 2016 is hereby set aside and the Civil Revision Petition stands allowed. No costs. Connected C.M.P. is closed.

14.11.2018

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To

The Principal Sub Court, Krishnagiri.

C.R.P.(NPD) No. 2381 of 2018



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