



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Ninth day of April Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice M.SUNDAR

CMP(MD) No.8024 of 2016

IN

SA No.334 of 2004

CELESTINE

... PETITIONER / APPELLANT

Vs

DENNIS (DIED)

- 1 EBISAL
- 2 ANTO
- 3 ALOSYSIOUS
- 4 WILSON
- 5 SHAJI
- 6 VIJAYAN
- 7 SASI
- 8 RAJENDRAN
- 9 JOHN
- 10 BENEDICT
- 11 JERONE
- 12 EVERESTAL
- 13 PREMA MARY
- 14 LEONSAL
- 15 LELA

... RESPONDENTS / RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to receive the served copy of the Plaint in O.S.No.257 of 1992 on the file of District Munsif Court, Padmanabapuram, as additional evidence and mark the same as additional evidence on the side of the appellant in the present Second Appeal

PRAYER IN SA No.334 of 2004:-

to set aside the Judgment and decree passed by the learned Sub-Judge, Padmanabhapuram in A.S.No.45 of 1999 dated 23.06.2003 in pursuance of the Judgment and Decree dated 04.09.1999 in O.S.No.102 of 1998 on the file of the District Munsif Court, Eraniel, and pass such further or other orders as this Hon'ble Court.



petition and the affidavit filed in support thereof and upon hearing the arguments of MR.V.GEORGE RAJA, Advocate for the petitioner and of Mr.N.SIVAKUMAR, Advocate on behalf of the Respondents 1 to 5, the court made the following order:-

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Sole appellant in the main second appeal is the lone petitioner herein. Respondents 1 to 15 in the main second appeal are respondents 1 to 15 respectively, in this petition.

2. Parties in this petition are hereinafter referred to by their respective ranks in main second appeal for the sake of convenience and clarity. In other words, the 'petitioner' herein shall be referred to as the 'appellant'.

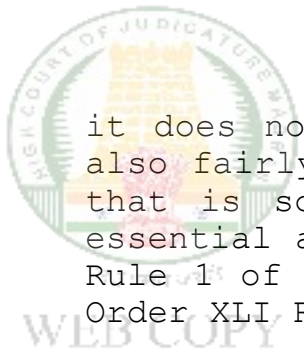
3. Appellant has taken out the instant petition, *inter alia* under Order 41 Rule 27 of the Civil Procedure Code, 1908 ("CPC" for brevity). The prayer in this instant petition is for marking an additional document. The additional document that is sought to be marked is a copy of the plaint in O.S.No.257 of 1992, on the file of the District Munsif Court, Padmanabhapuram.

4. To be noted, defendant No.9 in the suit in O.S.No.257 of 1992, one L.Celestine, is the sole appellant herein.

5. Mr.George Raja, learned Counsel representing the counsel on record for the appellant, submits that the copy of the plaint that is being sought to be marked is the copy of the plaint served on the 9th defendant in the said suit ie., the appellant herein and therefore, the same cannot be disputed.

6. Mr.N.Sivakumar, learned Counsel appearing for the contesting respondents submits that this petition does not qualify under Order XLI Rule 27 of CPC. It is the specific and emphatic submission of Mr.N.Sivakumar that the aforesaid copy of the plaint is a basic document for the suit, out of which the instant second appeal arises. To be noted, the instant second appeal arises out of a suit being O.S.No.102 of 1998, on the file of the Principal District Munsif cum Judicial Magistrate Court, Eraniel. The prayer in the suit ie., O.S.No.102 of 1998 itself is for cancellation of judgment and decree dated 20.09.1993 made in O.S.No.257 of 1992. It is the further specific case of Mr.N.Sivakumar that the prayer itself is for cancellation of judgment and decree in O.S.No.257 of 1992 and therefore, it completely passes one's apprehension, as to why a suit assailing a judgment and decree has been filed without a copy of the plaint in the suit in which the impugned judgment and decree came to be passed.

7. I am inclined to accept the aforesaid submission of learned Counsel for the contesting respondents. However, with regard to the legal submission of learned Counsel for contesting respondents that



it does not qualify under Order XLI Rule 27, CPC, learned Counsel also fairly submits that if this appellate Court finds the document that is sought to be marked as additional exhibit is absolutely essential and imperative, it can be done so under Clause (b) of Sub Rule 1 of Rule 27 of Order XLI. I deem it appropriate to extract Order XLI Rule 27(1) (b), which reads as follows:

"XLI.27.(1)....

(a).....

(aa).....

(b) *the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."*

8. Considering the position that this entire second appeal is pivoted on a challenge to the judgment and decree in O.S.No.257 of 1992, I am of the view that the plaint in aforesaid O.S.No.257 of 1992, being marked as an exhibit will be of assistance and will enable this Court to pronounce judgment. I am also of the view that this is definitely a substantial cause.

9. Be that as it may, before I proceed further, it may also be necessary to notice two dates. O.S.No.257 of 1992 was filed on 19.03.1992 in the aforesaid Court. However, O.S.No.102 of 1998 (out of which the instant main second appeal arises) was filed only on 29.02.1998. Moreso, the copy sought to be marked is a copy of the plaint in O.S.No.257 of 1992, served on the 9th defendant, who is the appellant before me. Therefore, I necessarily leave open the question as to why the plaint was not filed, much less marked in the trial Court. I reserve the right of the respondents in this regard for canvassing this aspect of the matter in the main second appeal.

10. Now that, the document which is sought to be marked, is a copy of the plaint as served on one of the defendants, as there is no dispute about the relevance of the documents, there is no need to take recourse to Rule 28 of Order XLI CPC. Therefore, I deem it appropriate to mark the aforesaid document ie., plaint copy in O.S.No.257 of 1992 on the file of the District Munsif Court, Padmanabhapuram, as Ex.A.26 (In O.S.No.102 of 1998) as the relevance and admissibility of the document cannot be disputed that being the plaint copy served on appellant herein, in her capacity as 9th defendant in the said suit.

11. One additional factor is, I also notice that the preliminary decree and judgment in aforesaid O.S.No.257 of 1992 both dated 20.09.1993 have been marked as Ex.A.15 and Ex.A.16.

12. This petition is ordered on above terms ie., Ex.A.26 is marked, reserving the rights of respondents, as set out supra in this order.



13. Registry is directed to assign Exhibit number ie., A.26 to the aforesaid suit within five working days from today.

sd/-
09/04/2018

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/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE DISTRICT MUNSIF,
PADMANABHAPURAM

2 THE DISTRICT MUNSIF COURT,
ERANIEL

COPY TO:-

COPY TO:

THE SECTION OFFICER,
V.R SECTION, MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

MR

JAM/16/04/2018/ CM-VR / RNB/ 4P-4C

ORDER
IN
CMP (MD) No.8024 of 2016
IN
SA No.334 of 2004
Date :09/04/2018