



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.03.2018
(Reserved on 07.03.2018)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.432 of 2018
and
CMP (MD) No.1896 of 2018

Kaliyammal

... Petitioner/ Petitioner/
Appellant/ Plaintiff

vs.

1) Palaniyammal
2) Shanmugham
3) The General (works) Manager,
E.I.D. Parry India Ltd.,
Pugalur,
Pugalur Sugar Factor Post and Karur Taluk. ... Respondents/
Respondents/ Respondents/
Defendants

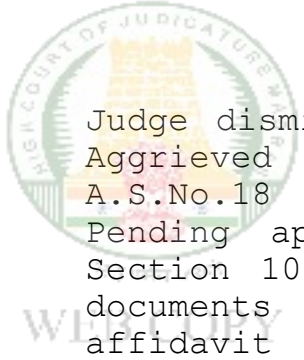
Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.12.2017 passed in I.A.No.226 of 2017 in A.S.No.18 of 2015 on the file of the Principal District Judge, Karur.

For Petitioner : Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 14.12.2017 passed in I.A.No.226 of 2017 in A.S.No.18 of 2015 on the file of the Principal District Judge, Karur.

2.The revision petitioner is the plaintiff and the respondents are defendants in O.S.No.109/2008 on the file of the Principal Sub Judge, Karur. The said suit was filed for the relief of declaration and recovery of possession in respect of the 1st item of the suit property, for partition claiming 3/6th share as well as consequential relief of permanent injunction in respect of the 2nd item of the suit schedule property. The said suit was resisted by the respondents 1 and 2. The learned Sub Judge by judgment and decree dated 20.06.2013 granted the relief in respect of 1st item of the suit schedule property. However, on a total misconception of facts and law, in spite of the specific admission of DW1, the learned Sub



Judge dismissed the suit relating to the 2nd item of the property. Aggrieved over the same, the petitioner preferred appeal in A.S.No.18 of 2015 before the Principal District Court, Karur. Pending appeal, the petitioner filed I.A.No.226 of 2017 under Section 107 read with Section 151 CPC seeking to receive certain documents and mark the same as additional evidence. In the affidavit filed in support of the said petition, it has been specifically contended that the learned Sub Judge has held that the petitioner has not proved the fact that his family is entitled to any inch of land in Survey No.242 measuring 1 acre and 30 cents of punjai, Kadambankurichi village, Manmangalam Taluk and therefore, in order to assail the said finding, necessarily certain documents which are mentioned in the petition are very crucial in deciding the appeal and therefore, the petitioner filed the present petition for the above relief.

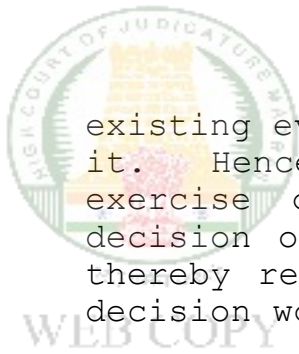
3.The learned Judge passed the impugned order dated 14.12.2017 in I.A.No.226 of 2017 in A.S.No.18 of 2015, holding that the application for permission to give additional evidence shall be heard along with the appeal, against which, the present revision petition has been filed.

4.Learned counsel for the petitioner contended that the learned Judge committed an error in not hearing the application and posting the application along with the appeal misconstruing as if the application has been filed under Order 41, Rule 27 CPC without adverting that the application has been filed only under Section 107 CPC. In support of his contention, learned counsel for the petitioner would rely on the judgment of the Hon'ble Supreme Court in Union of India vs. Ibrahim Uddin and another reported in 2012-4-L.W. 359 and contended that application under Order 41, Rule 27 CPC for taking additional evidence on record even if filed during the pendency of the appeal that has to be heard at the time of final hearing of the appeal and it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. He also relied on the judgments in S.Arjunan and others vs. K.R.Raviselvan reported in 2016-5-L.W.397, Adil Jamshed Frenchman (Dead) by LRs vs. Sardar Dastur Schools Trust and others reported in (2005) 2 SCC 476 and A.Andisamy Chettiar vs. A.Subburaj Chettiar reported in 2016 (1) MWN (Civil) 100.

5.Heard the learned counsel for the petitioner and perused the materials available on record.

6.The only issue before this Court for consideration is whether the learned Judge had committed an error in not hearing the application and posting the application filed under Section 107 CPC along with the appeal.

7.Sufficiency of the evidence has to be understood in the context of the difficulty in reaching a decision on the basis of the



existing evidence satisfactorily to the mind of the Court delivering it. Hence, unless and until the appellate Court undertakes the exercise of considering the judgment of the Trial Court, the decision of the appellate Court to receive additional evidence and thereby remand the case even before the stage of looking into the decision would be a case of putting a cart before the horse.

8. Dealing with Section 107(d) and Order 41 Rule 27 CPC in the decision reported in (2001) 1 SCC 309 (Mahavir Singh and others vs. Naresh Chandra and another), the Apex Court pointed out that the parties are not as a matter of right entitled to the admission of additional evidence and it is purely a matter of discretion which has to be exercised judiciously and sparingly. Hence, the stage at which such an exercise would arise certainly demands consideration of the Court that even before the decision of the Trial Court is tested, the appellate Court cannot decide on the merits of the I.A. to receive the additional evidence to order a remand. Going by the law declared by the Apex Court, in the decision reported in 2007 (2) CTC 49 (Kannathal and 4 Others Vs. Arulmighu Kanniammal Karuppasamy Thirukoil), unless the appellate Court has considered the judgment of the Trial Court on merits so as to form a view as to the necessity of admitting additional evidence, the decision to remand the matter back on receipt of an I.A. as a matter of course by hearing the party seeking the direction to file the additional evidence, would be in violation of Order 41 Rule 23 and 23-A of C.P.C.

9. Necessarily, the learned Judge should be convinced that production of additional evidence is necessary for rendering proper and complete justice and that can be decided only on testing the order passed by the Trial Court and therefore, in my considered opinion, the judgments produced by the learned counsel for the petitioner are not applicable to the present facts and circumstances of the case. The impugned order passed by the learned Judge does not warrant any interference.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Principal District Judge, Karur.

+1CC TO M/S.M.P.SENTHIL, ADVOCATE, SR NO.54154

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