



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P(MD)No.2585 of 2017 (NPD)

1.Soosaimary
2.Kasbar
3.Santhiyagu
4.Arockiasamy
5.Loordhumary
6.Josephmary

...Petitioners/Respondents 1 to 6/ Respondents

Vs.

1.Amalorpavam
2.John Bosco
3.Soosai Arul
4.Jeyaseeli
5.Xavier

...Respondents 1 to 4 / Petitioners / Appellants
...5th Respondent/7th Respondent/7th Respondent

PRAYER: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the order and decreetal order dated 04.12.2017 made in I.A.No.4 of 2016 in A.S.No.5 of 2015 on the file of the Sub Court, Paramakudi.

For Petitioners : Mr.D.Senthil
For Respondents : M/s.Ajmal Associates - R1 to R4
: No Appearance - R5

ORDER

This Civil Revision Petition has been filed challenging the fair and decreetal order dated 04.12.2017 passed in I.A.No.4 of 2016 in A.S.No.5 of 2015 on the file of the Sub Court, Paramakudi.

2. The petitioners are the plaintiffs in the suit in O.S.No.20 of 2013 and the said suit has been filed for declaration and for permanent injunction. The respondents are the defendants, who have contested the suit and the same was allowed on 09.12.2014. Aggrieved over the same, the respondents/defendants preferred an appeal in A.S.No.5 of 2015. During the pendency of the appeal, the respondents 1 to 4 herein filed an application in I.A.No.4 of 2016 under Order 41 Rule 27 of Civil Procedure Code for marking additional documents, which was allowed. Aggrieved over the same, the petitioners/ plaintiffs have filed the above Civil Revision Petition stating that the learned Trial Judge ought to have heard



the petition along with the main appeal, but the trial Judge has allowed the application and posted the main appeal for arguments.

3. Heard the learned Counsel on either side and perused the materials available on record.

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4. The respondents herein has filed the above application for reception of additional documents. The only grievance expressed by the petitioner is that the learned Judge ought not to have allowed the application, straightaway and the petition to be heard along with the main appeal. The application filed under Order 41 Rule 27 of Civil Procedure Code, seeking permission to receive additional documents cannot be disposed of independently and the said application has to be taken up along with the appeal.

5. In support of his contention, the learned Counsel for the petitioners has relied on the judgment reported in 2017 (4) CTC - 32 in the case of G.Venkatachalam Vs. A.P.Kuppuraj. S.Sundaram (died) and others, wherein, at paragraph Nos.29 & 30, it is held as follows:

"29. The appellate Court went beyond the scope of Order 41, Rule 27, C.P.C.

30. An aspect to be noted is that the Appellate Court has heard and disposed of the petition filed under Order 41, Rule 27, C.P.C. independently, separately. It should hear only along with main appeal. Then only the Court could read the evidence, record of the case and decide whether the new documents are necessary to take a decision in the appeal.
"

6. In view of the above principle laid down in the said judgment (cited supra), the appellate Court has erred in hearing the petition under Order 41, Rule 27 of Civil Procedure Code and disposing of the same independently and separately and it should have taken up the petitioner along with the main appeal. Therefore the procedure adopted by the said Court is against the ratio laid down by the Hon'ble Supreme Court in Union of India Vs. Ibrahim Uddin and another and on this ground, the order of the Appellate Court is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the order dated 04.12.2017 made in I.A.No.4 of 2016 in A.S.No.5 of 2015 is set aside. The I.A.No.4 of 2016 in A.S.No.5 of 2015 is remanded back to the said Appellate Court and the Appellate Court will hear the said I.A.No.4 of 2016 along with A.S.No.5 of 2015 following the guidance and the principles laid down in Order 41, Rule 27 of Civil Procedure Code. The appeal suit is of the year 2015, shall be disposed of by the said Judge within a period of three months, from the date of receipt of a copy of this order. No costs.



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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Paramakudi,
Ramanathapuram District.

+ 1 cc TO Mr.D.Senthil , Advocate in SR No. 53125
+ 1 cc TO M/S.Ajmal Associates , Advocate in SR No. 53143

rm
AE/KKR/SAR3/21.03.2018/3P/4C

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