



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

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C.R.P.(PD) (MD) Nos.1309 & 1310 of 2018
and C.M.P.(MD) No.5569 of 2018
in
CRP (PD) (MD) 1309/2018

Balamani ... Revision Petitioner/Respondent/Respondent in
both petitions

-vs-

Lebana Sundaram Pillai ... Respondent/Petitioner/Appellant
in both petitions

Prayer in C.R.P.(MD) 1309/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 14.03.2018 made in I.A.No.78 of 2013 in A.S.No.16 of 2013 on the file of the IV Additional District Judge, Tirunelveli.

Prayer in C.R.P.(MD) 1310/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 21.03.2018 made in I.A.No.194 of 2013 in A.S.No.16 of 2013 on the file of the IV Additional District Judge, Tirunelveli.

For Petitioner : Mr.J.Parekhkumar

For Respondent : Mr.S.P.Maharajan

C O M M O N O R D E R

The revision petitioner is the plaintiff in O.S.No.55 of 2010 on the file of the learned Subordinate Judge, Ambasamudram, Tirunelveli District and in the suit, the plaintiff/petitioner herein sought for declaration, permanent injunction, etc., and the suit was decreed in her favour, against which, the respondent herein had preferred an appeal in A.S.No.16 of 2013. During pendency of the appeal, the appellant / respondent herein took out two applications in I.A.Nos.78 and 194 of 2013 in A.S.No.16 of 2013 on the file of the IV Additional District Judge, Tirunelveli for reception of documents and recalling D.W.1 for marking the documents respectively. Those applications were allowed by the First Appellate Court on the ground that the documents specified by the appellant /



respondent herein are essential to decide the case and challenging the same, the respondent / petitioner herein is before this Court.

2. It is the main case of the revision petitioner that the orders of the First Appellate Court are not sustainable in the absence of disclosure of averments in the Appeal grounds, relating to the documents to be received and therefore, the appellant cannot be allowed to introduce a new case through additional evidence. The appellant also did not specify reasons as to why those documents were not marked before the Trial Court and as such, the permission given by the Court for adducing additional evidence, that too, in an appeal stage is unheard of.

3. The revision petitioner states that the main intention of the appellant is to drag on the proceedings and he, having not deposed anything about the documents during trial, has now been asking for marking of the documents, which is nothing, but an abuse of process of law. There is no pleadings raised with respect to the subject document in the appeal and as such, seeking permission to recall D.W.1 and mark the documents is against the provisions of law. Therefore, it is prayed for dismissal of these civil revision petitions.

4. Learned counsel for the appellant / respondent herein has strenuously contended that the documents sought to be produced are very vital to the issue on hand so as to render a definite decision, as the findings of the First Appellate Court are on the basis of the recent documents, completely ignoring the old documents. If the vital documents have not been marked and D.W.1 has not been examined in connection with the documents, much prejudice would be caused to her. It is further stated that it is a mandate on the part of the Court to ensure the extension of balance of convenience on both sides and therefore, the First Appellate Court had rightly considered the matter in favour of the appellant and the orders need no intervention by this Court.

5. Heard the learned counsel on either side and also perused the material documents available on record.

6. It is the claim of the appellant / respondent herein that according to the Trial Court, there was no subdivision of S.No.133/6, but to the contrary, documents to prove the existence of the said survey number from 1902 onwards, were made available to him only after disposal of the suit and therefore, it is absolutely necessary to mark those documents and also to examine D.W.1 in respect of the documents. On the other hand, it is the submission of the petitioner herein that when no ground was raised in the appeal and in the absence of any direct connection of the documents with the present case, the marking of documents can merely be construed as a futile exercise.

7. Further, the learned counsel appearing for the petitioner has produced the judgement of the Hon'ble Supreme Court in the case of *Union of India vs. Ibrahim Uddin* and another reported



in (2012) 8 SCC 148, wherein, in Paragraphs No.52, it has been held as follows:

"52.Thus, from the above,it is crystal clear that an application for taking additional evidence on record at an appellate stage, even if filed during the pendency of the appeal, is to be heard at the time of final hearing of the appeal at a stage when after appreciating the evidence on record,the Court reaches the conclusion that additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. In case, the application for taking additional evidence on record has been considered and allowed prior to the hearing of the appeal, the order being a product of total and complete non- application of mind, as to whether such evidence is required to be taken on record to pronounce the judgment or not, remains inconsequential/ inexecutable and is liable to be ignored".

8. As per the ratio laid down by the Hon'ble Supreme Court in the case (cited supra), when an application is filed under Order 41 Rule 27 r/w Section 151 of C.P.C in the appeal stage for receiving additional documents, the Appellate Court should hear the said application along with the appeal and the application should not be heard independently.

9. In view of the settled proposition of law, this Court is of the view that there is force in the contention raised by the petitioner that the Court ought to have heard the applications along with the pending appeal. Hence, there is no second opinion than the one that the orders of the Court dated 14.03.2018 and 21.03.2018 are liable to be set aside.

10. In the result :

a) these Civil Revision Petitions are allowed and both the respective orders dated 14.03.2018 and 21.03.2018 made in I.A.No.78 of 2013 and 194 of 2013 in A.S.No.16 of 2013 by the learned IV Additional District Judge, Tirunelveli are hereby set aside and the matter is remanded back to the learned IV Additional District Judge, Tirunelveli for re-consideration of the Applications along with the main A.S.No.16 of 2013;

b) the learned IV Additional District Judge, Tirunelveli is directed to dispose of both A.S.No.16 of 2013 and I.A.Nos.78 & 194 of 2013, within a period of two months from the date of receipt of a copy of this order, without giving any unnecessary adjournment to either parties and the parties shall cooperate for speedy disposal within the time stipulated above.



No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(CS-I)

/True copy/

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Sub Assistant Registrar (CS-IV)

To:

The IV Additional District Judge,
Tirunelveli.

+1cc to Mr.J.Parekhkumar, Advocate, SR.No.73399

+1cc to Mr.S.P.Maharajan, Advocate, SR.No.72912

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