

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.08.2019**

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(NPD)No.2113 of 2019
and
C.M.P.No.13668 of 2019

1.Latha Venkateswaran

2.V.Sivakumar

: Petitioners

Vs.

1.Chitra Muralidhar

2.C.Meenakshi Sundaram

: Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure praying to set aside the fair and decreetal order passed in C.M.P.No.924 of 2017 in A.S.No.63 of 2015 on the file of the First Additional City Civil Court at Chennai, dated 28.02.2019.

For Petitioners : M/s.K.Sumathi

For Respondent No.1 : Mr.C.R.Malarvannan

For Respondent No.2 : No Appearance

ORDER

This Civil Revision Petition is directed against the order allowing the application filed under Order 41 Rule 27 of the Code of Civil Procedure.

2. The first respondent herein filed an application under Order 41 Rule 27 of the Code of Civil Procedure, to permit her to produce and mark additional documents during the pendency of the appeal. The Trial Court has admitted the documents and passed a separate order even before taking up the final hearing of the appeal. Aggrieved over the same, the revision petitioners are before this Court.

3. It is well settled that an application under Order 41 Rule 27 of the Code of Civil Procedure is to be considered at the time of hearing of the appeal on merits as to find whether the documents are the evidence sought to be adduced and have any relevance on the issues involved.

4. The Hon'ble Supreme Court in the judgment reported in **MANU/SC/0561/2012 [Union of India (UOI) Vs. Ibrahim Uddin and Others]** has held as under:

"41. Thus, from the above, it is crystal clear that 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, 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/in executable and is liable to be ignored.

In the instant case, the application under Order XLI Rule 27 of Code of Civil Procedure was filed on 06.04.1998 and it was allowed on 28.04.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.04.1999 is just to be ignored."

5. In the instant case, even before taking up the first appeal for final hearing, the Trial Court has passed an order independently. Passing of order in the application filed under Order 41 Rule 27 of the Code of Civil Procedure even before final hearing of the case is contrary to the statutory provision. Thus, the order passed by the Trial Court is set aside and the matter is remanded back to the Trial Court for appropriate orders in accordance with Order 41 Rule 27 of the Code of Civil Procedure.

6. The Civil Revision Petition is disposed of with the above observation.

No costs. Consequently, the connected miscellaneous petition is closed.

29.08.2019

Index:Yes/No

Internet: Yes/No

SML/bri

To
The First Additional City Civil Court,
Chennai.



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M.GOVINDARAJ, J.

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Order made in
C.R.P.(NPD)No.2113 of 2019

Dated: **29.08.2019**

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