

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (NPD) No. 3385 of 2019

and

C.M.P. No. 22217 of 2019

1. Sankar

2. Daivasigamani

... Petitioners

-Vs-

Valliammai

... Respondent

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.02.2019 made in I.A. No. 28 of 2017 in A.S. No. 71 of 2017 on the file of the Sub Judge, Jayankondam.

For Petitioners : Ms. M. Senthil Vadivu

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 28 of 2017 in A.S. No. 71 of 2017 by the learned Sub Judge, Jayankondam, by order dated 18.02.2019.

2. Originally before the trial Court, the respondent filed a suit for declaration of easementary right of the suit property and the said suit was dismissed on merits, as against which, the respondent / plaintiff filed an appeal in A.S. No. 71 of 2017 before the First Appellate Court, where he had filed the present application in I.A. No. 28 of 2017 under Order XLI Rule 27(b) r/w 151 of the Civil Procedure Code seeking permission of the Court to the respondent / appellant, who was the plaintiff in the trial Court, to file certain documents. Since the said application was allowed through the impugned order by the First Appellate Court, aggrieved over the same, the defendants / revision petitioners, who were the respondents in the appeal, filed the present revision petition.

3. I have heard the learned counsel appearing for the revision petitioners who would submit that, under Order XLI Rule 27(b) of CPC, these kind of documents cannot be permitted to be marked by way of evidence at the appeal stage, therefore, the present impugned order allowing the respondent / appellant to mark certain documents is

erroneous and therefore, on that ground, the impugned order is liable to be set aside.

4. I have heard the learned counsel appearing for the revision petitioners and have gone through the materials placed before this Court.

5. Before the First Appellate Court, the respondent / appellant had filed the present IA, of course, under Order XLI Rule 27(b) r/w 151 of the Civil Procedure Code.

6. Order XLI Rule 27 speaks about the production of additional evidence in the Appellate Court, where sub rule(1) states that, the parties to an appeal shall not be entitled to produce the additional evidence, whether oral or documentary in the Appellate Court. However, there are three exemptions given to the general rule which are enumerated in Clauses (a), (aa) and (b).

7. Though it has been quoted that the present IA was filed under Order XLI Rule 27(1)(b) of the Civil Procedure Code, the correct provision must be 27(1)(aa) which reads thus:

"(aa) The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or."

8. Under Order XLI Rule 27(1)(aa), if a party, who is seeking to produce an additional evidence is able to establish that, notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed was passed by the trial Court, he can be permitted to produce such evidence by the appellate Court.

9. Herein the case in hand, the respondent / plaintiff sought for easmentary right over the property in Survey No. 264/2. Though the suit was dismissed, while preferring an appeal, the respondent /

plaintiff was able to gather some document in order to corroborate that, the property at New Survey No. 264/2 is corresponding to the Old Survey No. 147/B1 or 147/1B, which has already been marked as Ex.P4 before the trial Court.

10. According to the affidavit filed in support of the said Interlocutory Application, the respondent / appellant had stated that, the said document was obtained from the District Collector Office (Revenue Department) on 11.07.2017, therefore the said revenue document now obtained by the parties showing that, the New Survey No. 264/2 is corresponding to Old Survey No. 147/1B, which is nothing but the property shown in the property at Ex.P.4, which was already marked.

11. While seeking such indulgence from the First Appellate Court, the respondent had not introduced any new case and also she had given satisfactory reason to the Court below to establish that, despite the due diligence taken by her, she was not in a position to obtain the said document and produce before the Court.

12. Only in these kind of circumstances, no doubt, Order XLI Rule 27(1) (aa) can very well be invoked. The only criteria to invoke clause (aa) of Sub-Rule(1) of Rule 27 of Order XLI is the satisfaction of the Court before which, the party to establish that, even after the due diligence, the party was not in a position to mark the said documents before the trial Court.

13. Herein the case in hand, after having gone through the factual matrix, this Court feels that, such circumstances are available in this case to the satisfaction of the First Appellate Court to invoke Order XLI Rule 27 (1)(aa) which has been infact rightly invoked by the First Appellate Court through the impugned order.

14. Therefore, this Court feels that, there is no acceptable reason to interfere with the said order of the First Appellate Court, which is impugned herein, as it is neither perverse nor erroneous.

15. In the result, this Civil Revision Petition fails and hence it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

31.10.2019

Index: Yes

Speaking order

vji

To

The learned Sub Judge,
Jayankondam.



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R. SURESH KUMAR, J.

vji



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