



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

CRP (MD) .No.537 of 2019 (PD)

and

C.M.P. (MD) .No.2683 of 2019

Tmt.Uma Maheswari ... Petitioner/4th Respondent
/4th Respondent

Vs.

1.Subbulakshmi @ Lakshmi
2.V.Latha ... Respondents 1 & 2/Petitioners/Appellants
3.Suguna
4.Selvi Revathy
5.Ammasi ... Respondents 3 to 5/Respondents
1 to 3/Respondents 1 to 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.12.2018 in I.A.No.329 of 2015 in A.S.No.25 of 2015 on the file of the Principal District Court, Tirunelveli.

For Petitioner : Mr.H.Arumugam
For Respondents : Mr.N.GA.Nataraj

ORDER

This Civil Revision Petition has been preferred against the fair and decreetal order, dated 11.12.2018, passed in I.A.No.329 of 2015 in A.S.No.25 of 2015, on the file of the Principal District Court, Tirunelveli.

2.The first and the second respondents have filed a suit in O.S.NO.13 of 2011 for partition claiming half share in the suit schedule property and the said suit was dismissed on 29.01.2015, because the plaintiffs have not proved their relationship with the deceased Paradesi @ Baskar and thereby, the claim was negatived by the trial Court. Aggrieved by the same, they preferred an appeal in A.S.No.25 of 2015. Along with the appeal suit, the first and the second respondents, who are the plaintiffs, have filed I.A.No.329 of 2015, to receive petition mentioned documents as additional evidence on the plaintiffs side.

<https://hcservices.ecourts.gov.in/hcservices/>

3.In the said I.A., the first and second respondents have contended that they have traced out the particulars of the



documents and the same will prove that the first and the second plaintiffs are the legal heirs of the deceased Paradesi @ Baskar and the said document has been obtained from the Sub-Registrar Office and therefore, the said document has to be produced as an additional evidence, as the same was not within their knowledge and it could not be produced by them, when the decree was passed by the trial Court and hence, they have filed I.A., along with appeal and it will definitely decide their claim or right that the first respondent is the legally wedded wife of Paradesi @ Baskar.

4. In O.S.No.13 of 2011, the revision petitioner/fourth defendant has filed a counter statement stating that the first and the second respondents are not entitled to file the suit and the alleged document relied by the plaintiffs is a gift deed, dated 18.03.1978, which has not been admitted by the revision petitioner/fourth defendant. It is further contended that the name of the husband of the first plaintiff/fourth respondent is also denied by the fourth respondent and one Kumutha is the legally wedded wife of Baskaran and he has no alias name. Hence, the name of Paradesi is not a nick name for Baskaran and if at all the original deed, which is produced before the Appellate Court is true, the said document cannot be considered as an additional evidence.

5. It is seen that though this revision has been filed against the order of the trial Court passed in I.A.No.329 of 2015, which was filed by the respondents 1 and 2, to receive some additional evidence, the first appellate Court has heard the parties both on the appeal suit viz., A.S.No.25 of 2015 and also in I.A.No.329 of 2015. After hearing the parties, the trial Court has passed the order only in I.A.No.329 of 2015, keeping the appeal pending. It would be relevant to extract the finding of the first appellate Court;

"14. In this appeal, the plaintiffs have filed I.A.No.329 of 2015 and submitted that, Baskaran has also executed another gift deed in favour of the 1st plaintiff in the year 1978 itself and now only the plaintiffs were able to trace the gift deed dated 18.03.1978. It is also pleaded in the petition that, the existence of these document was not known to them earlier and after due diligence they are able to produce the same before this Court. The same is not received as evidence it will cause prejudice to the plaintiffs.

15. This petition to adduce additional evidence has been objected by the defendant on the ground that, Baskaran has not executed any registered deed date: 18.03.1978 and he has no other name called Paradesi and the plaintiffs have not made out grounds to adduce additional evidence in this case.



16. The plaintiffs have come forward to seek permission of this Court to adduce additional evidence in this appeal on the ground that, they were able to trace this document only after the disposal of the suit and they have no knowledge about the existence of the document. This Court is of the view that, the recording of additional evidence is very much necessary to arrive at a just decision of the case and the plaintiffs have also made out the case that, the existence of gift deed dt:18.03.1978 was known to them only recently and they have satisfied the conditions imposed in Rule 27 Order 41 of C.P.C., for production of additional evidence.

17. Accordingly, the plaintiff is entitled to adduce additional evidence in support of the gift settlement dated:18.03.1978. This Court is of the view that this additional evidence has to be decided before deciding the other points and they shall be permitted to adduce their side evidence in this appeal only for the limited purpose of deciding the following point:-

1) Whether the 1st plaintiff is the first wife of Paradesi @ Baskaran?

After deciding this issue, further proceedings in this appeal will be taken up and I.A.No.329 of 2015 is to be allowed.

18. In the result, interim order passed and the petition in I.A.No.329 of 2015 is hereby allowed and parties are permitted to lead additional evidence if any, only for the limited purpose for deciding the following point:

Whether the 1st plaintiff is the first wife of Paradesi @ Baskaran?

After recording the additional evidences, judgment in this appeal will be passed after hearing the parties."

6. Aggrieved by the same, the present Civil Revision Petition has been filed.

7. The learned counsel appearing for the petitioner submits that the alleged settlement deed said to have been executed by Paradesi @ Baskaran cannot be accepted as additional evidence, as such, a plea does not fulfil the requirement of the Order 41 Rule 27 of C.P.C. In support of his contention, he relied on the judgment of the Apex Court in **SATHISH KUMAR GUPTA AND OTHERS VS. STATE OF HARYANA AND OTHERS** reported in **(2017) 4 Supreme Court Cases 760**. The relevant



portion of the judgment is extracted as under:

"19. The other part of the impugned order permitting additional evidence and remanding the case for fresh decision is uncalled for. No case was made out for permitting additional evidence on settled principles under Order 41 Rule 27 C.P.C. The provision is reproduced below:

"27. Production of additional evidence in appellate Court.-(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(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

(b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

The appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whether additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.

20. It is clear that neither the trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to be necessary to pronounce the judgment. Additional evidence cannot be permitted to fill in the lacunae or to patch up the weak points in the case. There was no ground for remand in these circumstances.

21. We may also refer to the argument that this Court, while remanding the matter in the earlier round, had given liberty to MSIL to file an application for impleadment or to act as an intervenor which implied that such application was to be accepted. We do not find any merit in this contention also. It cannot be held that any right was crystallised by the said observation and such prayer had to



be considered according to law. We have already held that post-acquisition allottee had no right in the matter."

Therefore, he prayed for allowing the Civil Revision Petition and set aside the order of the trial Court.

8.Per contra, the learned counsel appearing for the respondents 1 and 2/plaintiffs would submit that the document sought to be adduced as additional evidence was not within the knowledge of the respondents 1 and 2, at the time of trial of the suit and also when the decree in the suit was passed. He would further submit that the document came to the knowledge of the respondents 1 and 2 only recently and immediately they have filed I.A.No.329 of 2015 requesting the first Appellate Court to receive the said document in evidence. He would further submit that the appellate Court has rightly not taken any decision in keeping the appeal pending and only passed the order in I.A.No.239 of 2015 allowing the parties to lead additional evidence, only for the limited purpose of deciding the question as to whether the first respondent/first plaintiff is the first wife of Paradesi @ Baskaran. Thus, it is the submission of the learned counsel for the first respondent that in fact, the appellate Court has accepted the evidence only to the limited purpose whether the first plaintiff is the first wife of Paradesi @ Baskaran. Therefore, no prejudice would be caused to the petitioner/fourth respondent. Further, the appellate Court has permitted both the parties to adduce evidence to decide the point as to whether the first plaintiff is the first wife of Paradesi @ Baskaran.

9.The first appellate Court after observing the objections raised by the revision petitioner has only held that after deciding the issue as to whether the first respondent/first plaintiff is the first wife of Paradesi @ Baskaran and the further proceedings in the appeal will be taken up and in that view only, the said I.A was allowed.

10.On a perusal of the orders of the First Appellate Court, this Court is of the view that the First Appellate Court has not committed any illegality in allowing the petition filed under Order 41 Rule 27 of the C.P.C., and does not warrant any interference when the main issue as to the right of the plaintiffs, who are the appellants in the said case is yet to be decided. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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To

1.The Principal District Court,
Tirunelveli.

2.The Record Keeper,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.H.Arumugam, Advocate, SR.No.55203

+1cc to Mr.N.GA.Nataraj, Advocate, SR.No.54884

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SP/25.04.2019/ 6P/5C