

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(NPD).Nos.2469 and 2470 of 2015
and
M.P.No.1 of 2015

Subramanian ... Petitioner in both CRPs.

Vs.

Sellandi (died)

1.Sellandi

2.Sellammal

3.Sankar

... Respondents in both CRPs.

Common Prayer: Civil Revision Petitions filed under Section 115 of the Code of Civil Procedure, against the fair and decreetal orders dated 15.10.2014 rejecting the application in I.A.Nos.32/2011 and 2 of 2008 in A.S.No.6 of 2006 on the file of the Subordinate Judge, Sankari.

For Petitioner in
both CRPs. : Mr.P.Jagadeesan

For Respondents in
both CRPs. : Mr.D.Shivakumaran

COMMON ORDER

CRP.(NPD).No.2469 of 2015 has been filed by the petitioner/appellant against the dismissal of his application in I.A.No.32 of 2011 in A.S.No.6 of 2006 on the file of the Sub-Judge, Sankari, dated 15.10.2014.

CRP.(NPD).No.2470 of 2015 has been filed by the petitioner/appellant against the dismissal of his application in I.A.No.22 of 2008 in A.S.No.6 of 2006 on the file of the Sub-Judge, Sankari, dated 15.10.2014.

2. The petitioner herein in both the Civil Revision Petitions had filed I.A.No.32 of 2011 and I.A.No.2 of 2008 in A.S.No.6 of 2006 on the file of the Sub-Judge, Sankari, under Order 41 Rule 27 of CPC, seeking leave of the Appellate Court to receive the additional documentary evidence. The learned Sub-Judge, Sankari, had dismissed the said applications, by separate orders dated 15.10.2014. Feeling aggrieved, the petitioner/appellant has filed the present Civil Revision Petitions.

3. Heard Mr.P.Jagadeesan, the learned counsel for the petitioner in both CRPs. and Mr.D.Shivakumaran, the learned counsel for the respondent in both CRPs.

4. The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit in O.S.No.227 of 1996 on the file of the District Munsif, Sankari, for the relief of declaration and permanent injunction. He further submitted that the learned District Munsif, had dismissed the said suit by the judgment and decree dated 28.03.2005. Feeling aggrieved, the petitioner herein had filed an appeal in A.S.No.6 of 2006 on the file of the Sub-Judge, Sankari and also filed two applications under Order 41 Rule 27 of CPC in I.A.No.32 of 2011 and I.A.No.2 of 2008 seeking leave of the Court to receive the additional documentary evidence. He further submitted that the learned Sub-Judge, instead of taking the said applications along with the appeal for hearing, he took the applications separately and dismissed the applications.

5. He further submitted that the procedure adopted by the learned Sub-Judge, is against the settled principles of law. He further

submitted that the said appeal is still pending before the Sub-Judge, Sankari. Therefore, he prayed to allow these Civil Revision Petitions and set aside the orders passed by the learned Sub-Judge, Sankari, in I.A.No.32 of 2011 and I.A.No.2 of 2008 and remit back to the Appellate Court with a direction to take up the aforesaid applications along with the main appeal for arguments and thereafter, dispose of the same in accordance with law.

6. Per contra, the learned counsel for the respondents has submitted that the petitioner herein had filed a vexatious suit without any basis and considering the same, the trial Court had rightly dismissed the suit. He further submitted that eventhough the said suit was pending for nearly nine years before the trial Court, the petitioner herein did not take any steps for producing the documents which are sought to be produced before the Appellate Court. He further submitted that the documents which are sought to be produced are also not relevant to the suit. Taking into consideration the aforesaid facts, the learned Sub-Judge, Sankari, had rightly dismissed the said applications and in the said orders, this Court need not interfere and therefore, he prayed to dismiss these Civil Revision Petitions.

7. A perusal of the typed set of papers filed by the petitioner would show that he filed a suit in O.S.No.227 of 1996 on the file of the District Munsif, Sankari, for the relief of declaration of his title over the suit property and for permanent injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the suit properties. The learned District Munsif, after considering the materials placed before him had dismissed the said suit by the judgment and decree dated 28.03.2005. Feeling aggrieved, the petitioner herein had filed an appeal in A.S.No.6 of 2006 on the file of the Sub-Judge, Sankari, and also filed two applications under Order 41 Rule 27 of CPC in I.A.No.32 of 2001 and I.A.No.2 of 2008 seeking leave of the Appellate Court to receive certain documents as additional evidence. The learned Sub-Judge, Snakari, had taken up the said applications independently and dismiss the said applications by separate orders dated 15.10.2014.

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8. At this juncture, it would be relevant to refer to the provision of Order 41 Rule 27 of CPC which reads thus:-

“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 produce 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) Whenever, additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

9. A bare reading of the aforesaid provision shows that the Appellate Court can permit the parties to adduce additional evidence on the following grounds:-

1) Where the trial Court refused to receive the evidence which ought to have been admitted;

2) Where inspite of exercising due diligence, parties could not produce the evidence before the trial Court and

3) Where 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.

10. For coming to the conclusion whether the said document is required to be produced or for any other substantial cause, the Appellate Court should have taken up the applications, which were filed under Order 41 Rule 27 of CPC along with the main appeal. After hearing arguments in the applications and also in the appeal, if the Appellate Court comes to the conclusion that the said document is absolutely necessary for deciding the case or for any substantial cause, the Appellate Court shall allow the said applications or it may dismiss the said applications, if the petitioner has not satisfied any of the

aforesaid three grounds. If the Appellate Court inclined to allow the said applications, it can allow them independently by separate orders and thereafter it has to follow the procedure prescribed under Order 11 Rule 28 CPC. If the Appellate Court wants to dismiss the said applications it can dismiss them and proceed to dispose of the Appeal by a common order/judgment. Therefore, the Appellate Court should have taken up the said applications along with the main appeal for arguments, but in this case, the Appellate Court had separately taken up the aforesaid applications and dismissed the same. So, the procedure adopted by the Appellate Court is against the settled principles of law. Hence, the said impugned orders have to be set aside.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed. The orders passed by the learned Sub-Judge, Sankari, in I.A.No.32 of 2011 and I.A.No.2 of 2008 in A.S.No.6 of 2006 dated 15.10.2014 are set aside. The matters are remitted back to the Appellate Court (Sub-Judge), Sankari. The Appellate Court is directed to hear the applications in I.A.No.32 of 2011 and I.A.No.2 of 2008 along with A.S.No.6 of 2006 and thereafter, dispose of the same in accordance with law.

12. Considering the fact that the aforesaid appeal is pending for the past 14 years, the Appellate Court is directed to dispose of the said appeal and also the aforesaid Interlocutory Applications within a period of six months from the date of receipt of a copy this order.

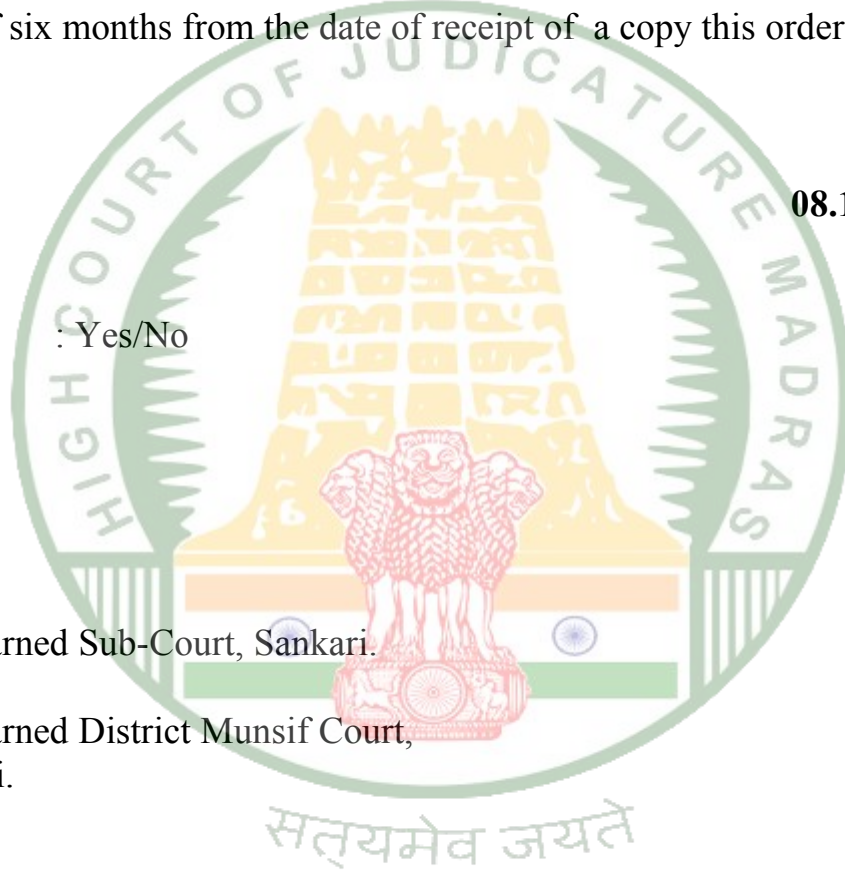
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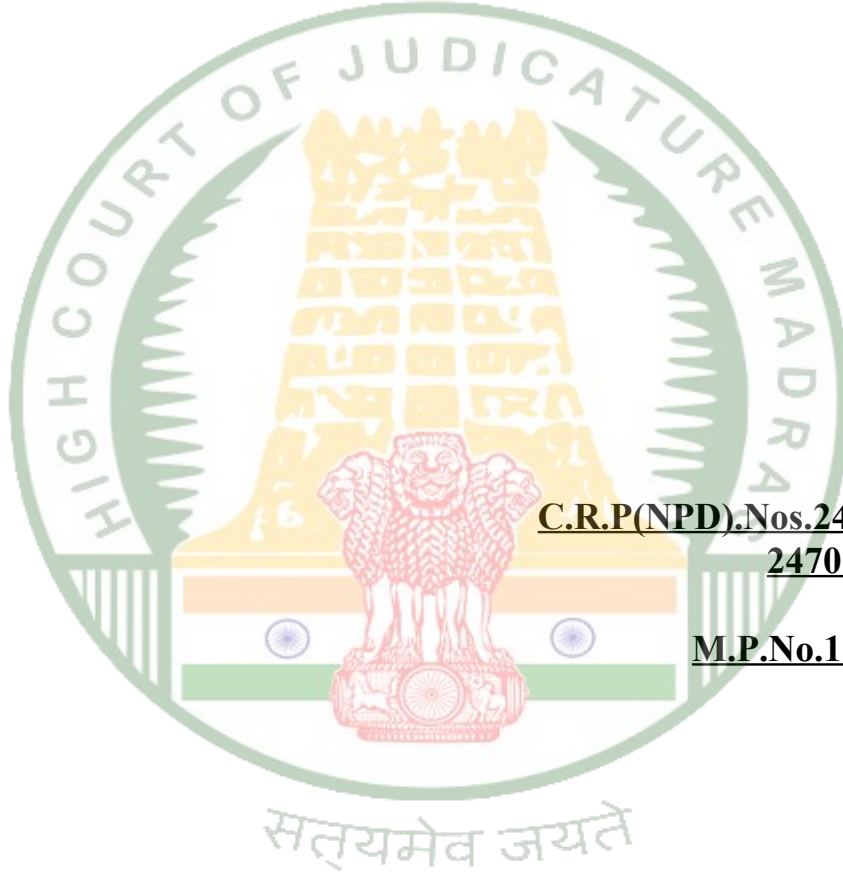
- 1.The learned Sub-Court, Sankari.
- 2.The learned District Munsif Court,
Sankari.



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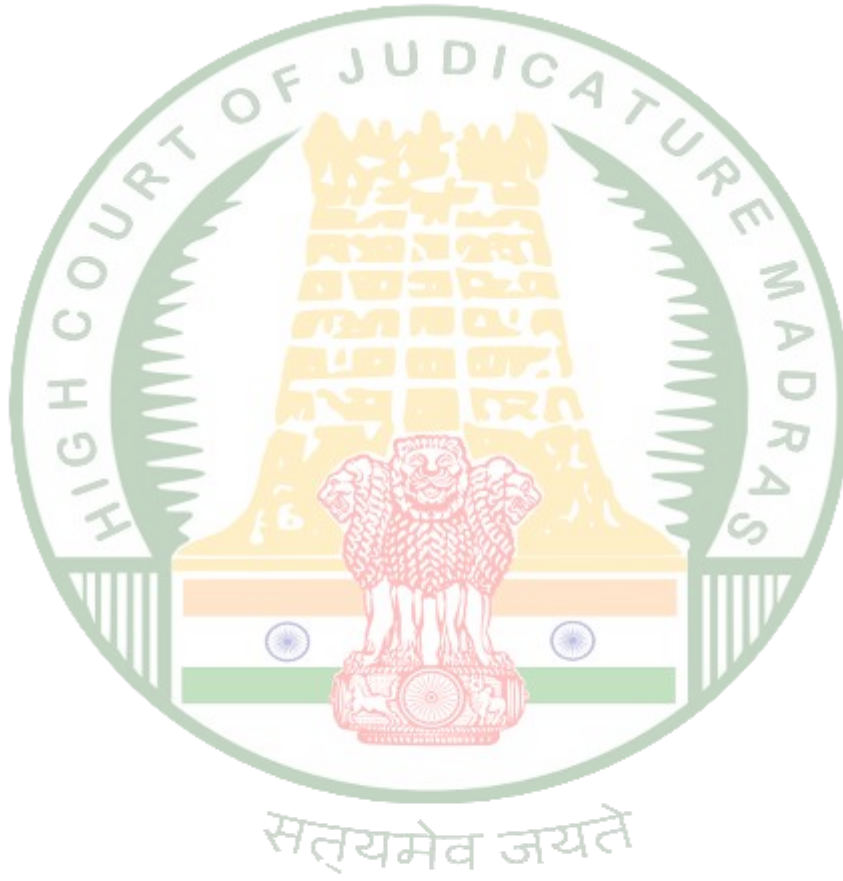
P.RAJAMANICKAM, J.
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