



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.1697 of 2015

and

M.P.(MD)No.1 of 2015

M.Andiyappan : Petitioner/Respondent/Respondent

.. Vs ..

1.Murugan
2.Lakshmanan : Respondents/Petitioners/Appellants

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decreetal order, dated 12.02.2015 passed in I.A.No.112 of 2013 in A.S.No.86 of 2013 on the file of the Additional Subordinate Court, Dindigul.

For Petitioner :Mrs.S.Vijayashanthi

For Respondents :Mr.H.Lakshmi Shankar

- - - - -

ORDER

This Civil Revision Petition is directed against the fair and decreetal order, dated 12.02.2015 passed in I.A.No.112 of 2013 in A.S.No.86 of 2013 on the file of the Additional Subordinate Court, Dindigul.

2.The revision petitioner is the defendant in the suit in O.S.No.140 of 2010. The plaintiffs, during the trial, filed an application for reception of certain documents. The said petition was dismissed on merits. Thereafter, the suit was also dismissed. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.86 of 2013 before the Additional Subordinate Court, Dindigul. During the pendency of the appeal, the plaintiffs filed an application in I.A.No.112 of 2013 for reception of additional documents under Order 41 Rule 27 CPC. The said petition was allowed by the learned Additional Subordinate Judge, Dindigul. Aggrieved by the same, the defendant has preferred the above revision petition.



3.The learned Counsel for the revision petitioner submitted that the plaintiffs have not even pleaded about the additional documents in the plaint. The learned Counsel further submitted that the documents must be a concocted and fabricated documents and that no reliance can be placed on the said documents. The learned Counsel then submitted that the petition filed by the plaintiffs before the trial Court was dismissed on merits. However, the plaintiffs have not challenged the said order by filing a revision petition at that time. Since the earlier order passed by the trial Court was not challenged, it is contended that the order of lower Court will operate as *res judicata* and that the application once again filed by the plaintiffs before the appellate Court is not maintainable.

4.This Court is unable to accept the submission of the learned Counsel for the petitioner that an application under Order 41 Rule 27 CPC is not maintainable before the appellate Court. Section 105 CPC is read as follows:

"105. Other orders.

(1) *Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal.*

(2) *Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand [****] from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness."*

5.The reading of Section 105 CPC shows that the party to the *lis*, who is aggrieved by any order, can challenge the same in the regular appeal that may be filed against the judgment and decree in the suit provided such order had affected the decision.

6.Having regard to the object of Section 105 of CPC, the contention of the learned Counsel for the petitioner that the order dismissing the earlier application for reception of additional documents before the trial Court will operate as *res judicata* has no substance. The learned Counsel for the petitioner submitted that the lower appellate Court has failed to consider that the nature of documents, which are sought to be marked. It is stated that one of the documents is unregistered one and that the same is not admissible. The first document is only an agreement. The document is not produced. Unless the document is a conveyance, mere agreement is not required to be registered. The question whether the document is genuine or useful can be decided only at the time of

