

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2979 of 2016
and C.M.P.No.15044 of 2016

1.Rajathi Ammal

2.Manickam

3.Somasundaram

4.Raja

5.Prabhu

... Petitioners

Vs.

Venkatasubbu Reddiar (died)

1.Balasubramanian

2.Raguraman

3.Boovaragamurthy

4.Udayakumar

5.Jayabharathi

6.Buwanesvari

7.Umamaheswari

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 26.06.2014 made in I.A.No.37 of 2014 in A.S.No.40 of 2012 on the file of Sub Court, Gingee.

For Petitioners : Mr.S.Sounthar

For R1, R2, R4 to R7 : No appearance

For R3 : Mr.J.Bharathiraja

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

Civil Revision Petition is filed against the fair and decretal order dated 26.06.2014 made in I.A.No.37 of 2014 in A.S.No.40 of 2012 on the file of Sub Court, Gingee.

2.The parties are referred to as per their respective ranks in the First Appeal for the sake of convenience.

3.The petitioners are the appellants in A.S.No.40 of 2012 on the file of Sub Court, Gingee. They filed the said appeal against the

judgment and decree dated 14.10.2011 dismissing the suit in O.S.No.44 of 1991 on the file of Principal District Munsif Court, Gingee. Pending appeal, the 5th respondent filed I.A.No.37 of 2014 under Order XLI Rule 27 of C.P.C. seeking permission to file additional documents.

4. According to the 5th respondent, on 23.02.1987, he purchased the suit property in the Court auction sale in O.S.No.393 of 1970 on the file of District Munsif Court, Gingee and he is in possession and enjoyment of the suit property. The 5th respondent came to know after disposal of O.S.No.44 of 1991 that 1st respondent Kannappa Chettiar, the husband of the 1st appellant, father of the appellants 2 to 5, sold the suit property to one Kannaiah Chettiar, son of Venugopal Chettiar, under three registered sale deeds dated 15.11.1976, 05.07.1977 and 16.03.1978 for sale consideration of Rs.6,000/-, Rs.14,000/- and Rs.7,000/- respectively. The 1st respondent/Kannappa Chettiar has also delivered the possession of the suit property to the said Kannaiah Chettiar under the above three sale deeds. During the trial of O.S.No.44 of 1991, the 5th respondent did not

have any knowledge about the three sale deeds. The 5th respondent came to know about the sale deeds only after filing of the appeal at the time of making enquiries with regard to appellants' false claim of title and possession of the suit property. By registered settlement deed dated 19.12.2011, the 5th respondent settled the suit property to his son Boovaragamurthy, the 3rd respondent in C.R.P. From the date of settlement, the said Boovaragamurthy is in possession and enjoyment of the suit property. His son filed W.P.No.15885 of 2013 challenging the notice issued by the District Revenue Officer, Villupuram, with regard to inspection of suit property. In the said Writ Petition, the 1st respondent, Kannappa Chettiar was the 2nd respondent. This Court by the order dated 25.10.2013 quashed the notice issued by the District Revenue Officer and held that 5th respondent and his son were in possession and enjoyment of the suit property. Further, the 5th respondent filed CrI.O.P.No.156 of 2014 before this Court seeking Police protection to put up compound wall/fencing and also to develop the suit property. This Court by the order dated 09.01.2014 directed the Police to give Police

protection. According to the 5th respondent, all these six documents are necessary for disposal of the appeal.

5.The appellants/petitioners herein filed counter affidavit denying all the averments made in the affidavit and stated that the trial Court in the judgment dated 14.10.2011 made in O.S.No.44 of 1991 held that the 5th respondent/Venkatasubba Reddiar has no right and title over the suit property. The 5th respondent did not file any appeal challenging the said finding. After such finding in O.S.No.44 of 1991, the 5th respondent Venkatasubba Reddiar has executed settlement deed in favour of his son Boovaragamurthy (3rd respondent in the present C.R.P.). The said settlement deed dated 19.12.2011 executed by the 5th respondent is not valid. The three sale deeds now sought to be marked are nominal sales and even if the said sales are valid, the 5th respondent Venkatasubba Reddiar will not get any title or right as his contention is, he purchased the suit property in Court auction and the 5th respondent admitted in his cross-examination before the trial Court that he is not in possession of

the suit property, the appellants and the 1st respondent Kannappa Chettiar are in possession and enjoyment of the suit property. Crl.O.P.No.156 of 2014 was not filed by the 5th respondent, but it was filed only by his son Boovaragamurthy, 3rd respondent herein. Orders in the Writ Petition and Crl.O.P. are subsequent to the disposal of the suit and the documents sought to be marked are not relevant to decide the issue in the First Appeal and prayed for dismissal of the said I.A.

6.The learned Judge considering the materials, allowed the I.A. holding that by allowing I.A., no prejudice will be caused to the appellants and the documents are necessary to decide the appeal and in the interest of justice.

7.Against the said fair and decretal order dated 26.06.2014 made in I.A.No.37 of 2014 in A.S.No.40 of 2012, the petitioners have come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioners contended that the procedure adopted by the lower Appellate Court in considering the I.A. filed to receive the additional evidence separately without considering the same along with main appeal is erroneous and is liable to be set aside. The documents filed are not necessary to decide the issue in the First Appeal. Even if the documents are admitted, it will not have a bearing on the final out come of the appeal. The Court below failed to see that the respondents have not satisfied the ingredients of Order XLI Rule 27 of C.P.C. for receiving additional evidence in the appellate stage. The learned Judge failed to see that the sale deeds sought to be marked were of the years 1976 to 1978. The Court auction sale took place in the year 1990 treating the property as that of Kannappa Chettiar. Accepting the title of the said Kannappa Chettiar only, the said Venkatasubba Reddiar, 5th respondent in the appeal alleged to have purchased it in the Court auction sale. Hence, it is not open to the said Venkatasubba Reddiar to say now that long prior to the Court auction sale, Kannappa Chettiar sold the suit property to Kannaiah Chettiar. The additional

evidence sought to be raised by Venkatasubba Reddiar is against his own pleadings and he cannot be allowed to raise evidence against his pleadings. The documents are irrelevant to decide the issue and prayed for allowing the Civil Revision Petition.

8(i).In support of his contentions, the learned counsel appearing for the petitioners relied on the following judgments:

(i) **(2001) 10 SCC 619 (State of Rajasthan vs. T.N.Sahani and others);**

“4.It may be pointed out that this Court as long back as in 1963 in K.Venkataramiah v. Seetharama Reddy (AIR 1963 SC 1526) pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the Court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce

its judgment in a more satisfactory manner. This is entirely for the Court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the Court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law.”

(ii) (2012) 8 SCC 148 (Union of India vs. Ibrahim Uddin and another);

“42. Whenever the appellate Court admits additional evidence it should record its reasons for doing so (Sub-rule (2)). It is a salutary provision which operates as a check against a too easy reception of evidence at a late stage of litigation and the statement of reasons may inspire confidence and disarm objection. Another reason of this requirement is that, where a further appeal lies from the decision, the record of reasons will be useful and necessary for the Court of further appeal to see, if the discretion under this rule has been properly exercised by the Court below. The omission to record the reasons must, therefore, be treated as a serious defect. But this provision is only directory and not mandatory, if the reception of such evidence can be justified under the rule.

43. The reasons need not be recorded in a separate order provided they are embodied in the judgment of the appellate Court. A mere reference to the peculiar circumstances of the case, or mere

statement that the evidence is necessary to pronounce judgment, or that the additional evidence is required to be admitted in the interests of justice, or that there is no reason to reject the prayer for the admission of the additional evidence, is not enough compliance with the requirement as to recording of reasons.

....
....
49. An application under Order XLI Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional

evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the Court.

.. ..

.. ..

52. 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, the 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/inexecutable and is liable to be ignored.

53.In the instant case, the application under Order XLI Rule 27 CPC was filed on 6.4.1998 and it was allowed on 28.4.1999 though the first appeal was heard and disposed of on 15.10.1999. In view of law referred to hereinabove, the order dated 28.4.1999 is just to be ignored.”

(iii) **(2018) 10 SCC 484 (Uttaradi Mutt vs. Raghavendra Swamy Mutt);**

“9. This objection need not detain us as we are of the considered opinion that the First Appellate Court would have been within its jurisdiction to permit the party to the proceedings to produce additional evidence before it for full, complete and effectual adjudication of the proceedings. The purport of Order XLI Rule 27 CPC has been considered by this Court in Union of India v. Ibrahim Uddin (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362. The Court adverted to the exposition made in earlier decisions of the Court from paragraphs 36 to 46 and summed up the proposition in paragraphs 47 and 48 as under:

“47. Where the additional evidence sought to be

adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed.

48. To sum up on the issue, it may be held that an application for taking additional evidence on record at a belated stage cannot be filed as a matter of right. The court can consider such an application with circumspection, provided it is covered under either of the prerequisite conditions incorporated in the statutory provisions itself. The discretion is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such an evidence could not be led in the court below and as to whether the applicant had prosecuted his case before the court below diligently and as to whether such evidence is required to pronounce the judgment by the appellate court. In case the court comes to the conclusion that the application filed comes within the four corners of the statutory provisions itself, the evidence may be taken on record, however, the court must record reasons as on what basis such an application has been allowed. However, the application should not be moved at a belated stage."

10.

11. In paragraphs 49 to 52 of the same reported decision of Union of India v. Ibrahim Uddin (2012) 8 SCC 148 : (2012) 4 SCC (Civ) 362, the Court dealt

with the question of stage of consideration of applications under Order XLI Rule 27 CPC, in reference to earlier decisions of this Court. Be that as it may, on analysing the reasons recorded by the First Appellate Court for rejecting the three applications filed by the respondent/defendant under Order XLI Rule 27 CPC and juxtaposing the same with the reasons recorded by the High Court for allowing those applications, in our opinion, the conclusion reached by the High Court on this count is impregnable.

16. In other words, there are two options available to the Appellate Court. First, it may record the evidence itself by permitting the parties to produce evidence before it as per Rule 27 of Order XLI or direct the Court from whose decree the appeal under consideration has arisen, to do so.”

9. Venkatasubba Reddiar, the 5th respondent in the appeal died and his legal representatives were impleaded as respondents in the Civil Revision Petition.

10.The learned counsel appearing for the 3rd respondent in the C.R.P. (son of 5th respondent) contended that the 5th respondent in the appeal came to know about the sale deeds only after disposal of the suit in O.S.No.44 of 1991. The other two documents are subsequent to disposal of the suit. These documents are necessary to decide the issue in the appeal. The learned Judge has properly appreciated the provisions of Order XLI Rule 27 of C.P.C. and by adopting the correct procedure, allowed I.A. There is no reason to interfere with the said order and prayed for dismissal of the Civil Revision Petition.

10(i).In support of his contentions, the learned counsel appearing for the 3rd respondent relied on the judgment reported in **2016 (1) MWN (Civil) 100 (A.Andisamy Chettiar vs. A.Subburaj Chettiar);**

“16.In Union of India v. Ibrahim Uddin and another, 2012 (8) SCC 148, this Court has held as under: -

“49. An application under Order 41, Rule 27, CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the

evidence sought to be adduced have any relevance/bearing on the issues involved. The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced....."

20. In view of the law laid down by this Court, as discussed above, regarding exercise of Revisional powers in the matter of allowing the application for additional evidence, when appeal is pending before the lower appellate court, the impugned order passed by the High Court cannot be upheld and the same is set aside. However, to do complete justice between the parties, we think it just and proper to direct the first appellate court to decide the application for additional evidence afresh in the light of observations made by this Court regarding principles on which such an application can be allowed or rejected. We order

accordingly. We further clarify that we have not expressed any opinion as to the merits of the case. Accordingly, the appeal is disposed of. No order as to costs.”

11.Though notice have been served on the respondents 1, 2 and 4 to 7 and their names are printed in the cause list, there is no representation for them either in person or through the counsel.

12.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

13.The issue to be decided in this case is whether the consideration of the application to receive the additional documents even before hearing of the appeal is correct or not.

14.From the materials available on record, it is seen that the First Appeal is pending. The 5th respondent in the First Appeal, who was 5th

defendant in the suit filed present I.A.No.37 of 2014 in A.S.No.40 of 2012 for permission to file six documents mentioned therein. According to the 5th respondent, he came to know about the three sale deeds executed by the 1st respondent Kannappa Chettiar in favour of one Kannaiah Chettiar, only after dismissal of the suit in O.S.No.44 of 1991. He applied for certified copies of the sale deeds and those documents are necessary to decide the issue in the appeal. Further, orders of this Court in W.P.No.15885 of 2013 and CrI.O.P.No.156 of 2014 were passed after dismissal of the suit. All these six documents are necessary to decide the issue in the First Appeal fully.

15.It is the case of the appellants in First Appeal/petitioners in C.R.P. that the trial Court in the judgment dismissing O.S.No.44 of 1991 has also held that the 5th respondent is not having any right or interest in the suit property and he is not in possession of the suit property. Against the said finding, the 5th respondent, father of the 3rd respondent herein has not filed any appeal and the said finding in O.S.No.44 of 1991 has

become final. The three sale deeds now sought to be filed and stand taken by the 3rd respondent now is contrary to the stand taken by his father (5th respondent) in the trial Court. The orders in the Writ Petition and Crl.O.P. are not relevant to decide the issue in the appeal. The learned First Appellate Judge even before taking up the appeal for hearing, separately took the I.A. and allowed on the ground that no prejudice will be caused to the appellants, the documents are necessary to decide the issue in the appeal and in the interest of justice.

16.It is now well settled that a party seeking to file additional documents in the appellate stage must first satisfy the ingredients of Order XLI Rule 27 of C.P.C. Only while considering the appeal, the Court has to decide whether with available materials, all the issues raised in the appeal can be decided fully. Only when the Court comes to the conclusion that additional evidence, both oral and documentary evidence is required for properly and fully deciding the issue in the appeal, can consider the application for filing additional documents. The Court has to

decide whether the documents sought to be filed are necessary and will be helpful to decide the issue in the appeal. Even before hearing the appeal, the Court cannot independently hear the application for filing additional documents. In the judgments relied on by the learned counsel for the appellants/petitioners, this principle has been categorically held so. In three judgments relied on by the learned counsel appearing for the petitioners and even in the judgment relied on by the learned counsel appearing for the 3rd respondent, the Hon'ble Apex Court considered the similar issue where the First Appellate Court heard and decided the application prior to hearing the appeal, remanded the application to the First Appellate Court to consider the same afresh. In view of the ratio in the judgments relied on by both the counsel for the appellants/petitioners and 3rd respondent, it is clear that the procedure adopted by the learned First Appellate Judge in considering and deciding the application for receiving additional documents even before hearing the appeal is erroneous. In view of the same, the impugned order of the learned Judge made in I.A.No.37 of 2014 is liable to be set aside and is hereby set

aside. The application in I.A.No.37 of 2014 is remanded to the First Appellate Court to consider the same along with appeal in A.S.No.40 of 2012 and pass orders on merits and in accordance with law.

17. With the above directions, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

09.09.2021

Index : Yes/No
Internet: Yes/No
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To

The Subordinate Judge
Gingee.

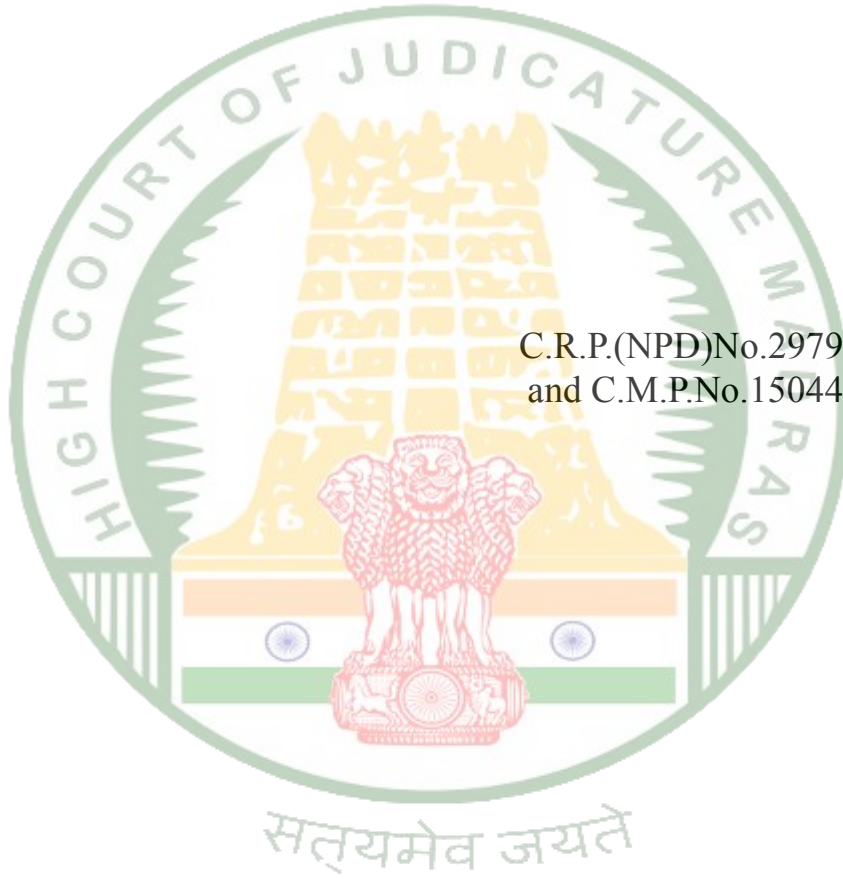


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