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CRP.No.156 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 156 of 2019

and

CMP.No.1332 of 2019

Nainmull Jain

.. Petitioner

Versus

1.Mrs. Madhu,
2.Mr. Sunil Kumar,
3. Mr Praveen Kumar

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 29.11.2018 passed by the XV Additional Judge City Civil Court, at Chennai in C.M.P.No.48 of 2018 in A.S.No.55 of 2018.

For Petitioner : Mr.K.J. Parthasarathy,

For Respondents : Mr. A.K. Rahavulu for R1
No Appearance for R2 & R3

**ORDER**

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This Civil Revision Petition has been filed by the petitioner seeking to set aside the order dated 29.11.2018 passed by the XV Additional Judge City Civil Court, at Chennai in C.M.P.No.48 of 2018 in A.S.No.55 of 2018.

2. The 1st respondent herein is the plaintiff and the the petitioner herein is the 1st defendant in the original suit.

3. For the sake of convenience, the parties are referred to as the rank cited in the Original Suit.

4. The case of the petitioner is that the 1st respondent/plaintiff filed the suit in O.S.No.8796 of 2011 before the Trial Court against the defendants for declaration that the the cancellation of the settlement deed dated 03.09.2009 registered as Document No.940 of 2009 on the file of the SRO, Sowcarpet, executed by the 1st defendant in favour of the plaintiff/1st respondent herein as null and void. The Trial Court after the full fledged Trial, dismissed by Judgment dated 14.10.2017 since the



plaintiff has not produced Original Settlement Deed which is said to have settled in favour of the plaintiff. Being aggrieved by the aforesaid Judgment dated 14.10.2017, the plaintiff/1st respondent herein has filed the First Appeal in A.S.No.55 of 2018 before the City Civil Court, Chennai to set aside the same. Pending the aforesaid First Appeal, the plaintiff/1st respondent herein has filed the Civil Miscellaneous Petition in CMA No.48 of 2018 before the XV Additional City Civil Court, Chennai under Order XLI Rule of CPC seeking to receive the petition mentioned document viz., Original Settlement Deed registered as Document No.940 of 2009 dated 03.09.2003, on the file of the SRO, Sowcarpet, as additional document to be marked in evidence. Having heard both sides and perused the petition, the City Civil Court allowed by its order dated 29.11.2018 accepting to receive the petition mentioned document as additional evidence on the side of the appellant/1st respondent herein. Being aggrieved by the aforesaid order dated 29.11.2018 passed by the City Civil Court, the 1st defendant/petitioner herein has filed the present Civil Revision Petition to set aside the same.



5. The learned counsel for the petitioner would submit that the First Appellate Court has not assigned any reason for allowing the petition for additional evidence while the plaintiff who had examined as P.W1 categorically stated in the examination that she has produced the attested copy of the Settlement Deed as Ex.P1 and she does not know about the Original Deed as to whether it was kept on her side.

6. It has been further submitted that the plaintiff/appellant/1st respondent herein ought not be permitted to fill up the lacuna and has to be penalised for laches when the plaintiff has not stated any reasons that why this documents was not filed before the Trial Court to prove her title and why it has been filed before the Appellate Court. In the absence of the just and sufficient cause, the Civil Miscellaneous Petition ought to have been dismissed. It has further been submitted that an application under Order 41 Rule 27 ought to be decided only at the time of hearing of the appeal and not independently and any such exercise would be contrary to the provisions of the Code and Law laid down by the Hon'ble Supreme Court. Hence, the order dated 29.11.2018 passed by the First Appellate Court is unsustainable and liable to be dismissed. In support of his



contention, the learned counsel for the petitioner has relied on the Judgment dated 17.07.2012 in the case of “*Union of India Vs. Ibrahim Uddin and Another*” reported in (2012) 8 Supreme Court Cases 148: (2012) 4 Supreme Court Cases (Civ) 362: 2012 SCC Online SC 528 wherein it has been observed as follows:

“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 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 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.”

In view of the aforesaid observation made by the Supreme Court, it makes clear that until and unless the Appellate Court requires the evidence



sought to be adduced to enable it to pronounce Judgment or any other substantial cause, the plaintiff/appellant/1st respondent herein can not seek under Order XLI Rule 27 to receive the document. Hence, it is liable to be set aside.

7. Per contra, the learned counsel for the 1st respondent would submit that the Trial Court dismissed the O.S. No.8796 of 2011 for non production of the Original Settlement Deed. Thereafter, the plaintiff was advised to file the original settlement deed which has all along been in the possession of the plaintiff/appellant/1st respondent herein. Hence, the plaintiff has filed the aforesaid Civil Miscellaneous Petition to receive the Original Settlement Deed bearing No.940 of 2009 dated 03.09.2009 on the file of the SRO, Sowcarpet, as additional document to be marked in evidence. Having considered the facts and circumstances of the case, the First Appellate Judge rightly allowed the said CMA on the ground that the proof and relevancy of the document and observation made by the Trial Court are all taken into consideration only at the time of detailed enquiry in the main appeal. In support of his contention, the learned counsel for the 1st respondent has relied on the Non-reportable Judgment made in



Civil Appeal No.1760 of 2022 in the case of “Sanjay Kumar Singh Vs.

The State of Jharkhand” passed by the Supreme Court of India wherein it has been observed as follows:

4. It is true that the general principle is that the appellate Court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate Court to take additional evidence in exceptional circumstances. It may also be true that the appellate Court may permit additional evidence if the condition laid down in the Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, 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. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate Court is to be considered is, whether or not the appellate Court requires the additional evidence so as to enable it to pronouncement Judgment or for any other substantial cause or like nature. As observed and held by this Court in the case of A.Andisamy



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Chettiar Vs. A. Subburaj Chettiar, reported in (2015) 17 SCC 713, 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. It is further observed that 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.”

Hence, there is no interference required in the order dated 29.11.2018 in CMA No.48 of 2018 passed by the City Civil Court.

8. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent as well as perused the materials available on record.

9. Having considered the facts and circumstances of the case and the submissions made by the learned counsel on either side as well as reliance



placed by them, it seems that while the plaintiff has claimed the suit property based on the Settlement Deed dated 03.09.2003, she failed to produce the original of the same to prove on record wherein she is possession and enjoyment of the suit mentioned property. On the failure of production of the original Settlement Deed dated 03.09.2003, the suit in O.S. No.8796 of 2011 filed by the plaintiff/appellant/1st respondent herein was dismissed. Under such circumstances, during the pendency of the first appeal in A.S.No.55 of 2018 filed by the plaintiff/appellant/1st respondent herein, the Civil Miscellaneous Petition in CMA No.48 of 2018 under Order XLI Rule 27 of CPC has been filed to receive the Original Settlement Deed dated 03.09.2009 as an additional evidence. While the Original Settlement Deed dated 03.09.2003 is the main evidence to the core issue of the suit, the plaintiff/appellant/1st respondent failed to produce the same at the time of Trial and filed an petition in CMA No.48 of 2018 during the pendency of the first appeal in A.S. No.55 of 2018 seeking to receive the Original Settlement Deed dated 03.09.2009 as an additional evidence and the same was allowed by order dated 29.11.2018 of the First Appellate Court without assigning any reasons. Under such circumstances, as an application under Order XLI Rule 27 of CPC can be



taken only at the time of deciding main appeal whether the said document is necessary or not, the order dated 29.11.2018 passed by the First appellate Court is hereby set aside. Further, the First Appellate Court is hereby directed to decide the application with regard to receive the Original Settlement Deed dated 03.09.2009 as an additional document along with main appeal as to whether the said document is necessary or not and dispose of the case within a period of three months from the date of receipt of copy of this order.

10.In the result, the Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed if any. No costs.

01.11.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To

1. The XV Additional Judge City Civil Court,
Chennai.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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