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CRP.No.1230 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 22.08.2022

Delivered On : 25.11.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.1230 of 2020

and

CMP.No.6681 of 2020

Arumugam .. Respondent/Respondent/Petitioner

Vs.

Smt.Dilli Bai .. Petitioner/Appellant/Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Order passed in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 on the file of the learned III Additional District Judge, Tiruvallur at Poonamallee.

For Petitioner : Mr.K.Mohana Murali
for Mr.P.A.Chitramani

For Respondent : Mr.G.Prakash



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ORDER

This Petition has been filed to set aside the Order passed in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 on the file of the learned III Additional District Judge, Tiruvallur at Poonamallee.

2. The Respondent herein was the Plaintiff in O.S.No.113 of 2010. The Suit was filed by the Plaintiff seeking the relief of delivery of vacant possession of 'B' Schedule property to the Plaintiff; directing the Defendant to remove all the structures in the 'B' Schedule property to the Plaintiff at his cost, failing which to enable the Plaintiff to remove the structure; directing the Defendant to pay compensation at the rate of Rs.1,500/- p.m., for unlawful use and occupation from the date of Plaintiff till recovery of possession and Ordering permanent injunction restraining the Defendant his agents, servant and men from to any manner interfering with the Plaintiff's peaceful possession and enjoyment of the Suit in 'A' Schedule property. The Defendant in the Suit, the Revision Petitioner herein had resisted the Suit denying the contentions of the Plaintiff. After full contest, the Suit was dismissed on appreciation



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of evidence. The Plaintiff had filed documents viz., Ex.A-1 to Ex.A-8, the Defendant had filed documents viz., Ex.B-1 to Ex.B-21. After dismissal of the Suit, the Plaintiff had filed the Appeal in A.S.No.4 of 2015 in which the Appellant had filed a Petition in I.A.No.69 of 2018 seeking to mark additional documents which are sale deeds. To disprove the contention of the Defendant before the trial Court that he had purchased the Plot from one Raja. The said Raja had purchased Plot from one Jayanthi Balakrishnan.

2.1. It is the contention of the Appellant in the Appeal before the trial Court/learned III Additional Judge by filing I.A.No.69 of 2018 to disprove the contention of the Defendant that the said Jayanthi Balakrishnan had not sold the property to Raja. *“The said Jayanthi Balakrishnan had sold Plot No.2 in favour of Allavudeen by sale deed dated 19.10.1987 and the said Allavudeen sold the property in favour of one Mohammed Bakhreeth by sale deed dated 12.07.1995 inturn the Mohammed Bakhreeth sold the said property in favour of Mercy Nalinikumari by sale deed dated 27.01.2006. In view of the above transaction, it is clear that Jayanthi Balakrishnan did not sell any*



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property to Raja but sold the same to Allaudeen. Therefore the sale deed dated 10.11.1993 is nothing but a fabricated document. In order to substantiate the same, the Petitioner had filed all the above referred documents before this Court in order to mark the same as exhibits. The documents alleged to have been marked are necessary for the purpose of decision of the above case since the original owner of the Suit property is not before the Court. The Petitioner has executed the sale deed in favour of his wife on 21.07.2010. Therefore the Court has framed the issue that the Suit is hit by non-joinder of necessary party and dismissed the Suit on that ground. The transaction is only subsequent to the filing of the Suit that too it is between the Petitioner and his wife. The sale deed executed by the Petitioner in favour of his wife is in no way hinder the issues framed in the above Suit. But the trial Court had framed the issue in respect of non-joinder of parties and given the finding that the Petitioner wife is also a necessary party. In order to clear all these clouds the present Petition had been filed.”

2.2. The Revision Petitioner herein as Respondent in I.A.No.69 of 2018 had filed counter, the relevant portion reads as follows:



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“The trial Court has rightly framed the issues and came into right conclusion. Aggrieved against the trial Court Judgment and decree the Petitioner had filed this Appeal in the year 2015 and filed CMP in the year 2017. That is after two years for delay in receiving documents with sole intention to protract the Appeal proceedings. Ex.B-19 and B-21 encumbrance certificate would clearly shows that the Respondent's vendor and his vendor had good title which also come to the Respondent. The present documents filed by the Petitioner will in no way help the Petitioner/Appellant is not for the claiming title Suit, but her original relief itself is for recovery of possession inter alia and other reliefs. The trial Judge has rightly pointed out that when the Petitioner/Appellant had sold out the Suit property before and after filing Suit to the two persons namely Indumathi and Banu (Power Agent Wife) and the sale deed has been marked as Ex.B1 & B2 and these instruments it is specifically stated that the buyers put into possession in the schedule mentioned property on the date of execution of sale deed, whereas the Respondent is in possession of the Suit property. The Petitioner/Appellant did not have any title either before filing the Suit or after filing the Suit. The Petitioner ought to have proved her title in the trial Court. Now it is the Petitioner/Appellant, who is bringing the cloud and chaos by harping upon the so-called the additional documents or delay



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in receiving documents. The present Petition is a vexatious one and the Petition is to be dismissed.”

2.3. The learned III Additional District Judge had allowed the Petition in I.A.No.69 of 2018 ignoring the vehement objection of the Respondent in I.A.No.69 of 2018 who is the Revision Petitioner herein. The relevant portion is extracted hereunder:

“8. This Court on perusal of sale deeds produced by the Appellant/Petitioner finds that it would be appropriate to allow this Petition since the Appellant/Petitioner has produced documents to substantiate her case that the Plot No.2 has not been sold by Jayanthi Balakrishnan to one Raja as contended by the Defendant in the Suit. Further more the Appellant/Plaintiff has stated that the Appellant was under the belief that the Advocate Commissioner's Report filed in an earlier case in O.S.No.233/2008 would be sufficient to prove her case but the trial Court has not relied upon the said report since the certified copy of the same was not filed. Further more the Appellant/Plaintiff has stated that the present documents had been obtained only after disposal of the above Suit in O.S.No.113/2010 as against which the present Appeal has been filed.

9. Thus this Court finds that the Appellant/Plaintiff has



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stated the reason for non-production of the present documents upon which she relies upon at the earliest point of time. Hence this Court on considering the above submissions and in the interest of Justice and for just decision of the case of the above Suit finds that it would be appropriate to allow this Petition. Hence, this Court is inclined to allow this Petition.

In the result, this Petition is allowed subject to proof and admissibility of documents in evidence. There is no order as to costs.”

2.4. The contention raised by the learned Counsel for the Petitioner in I.A.No.69 of 2018 cannot at all be accepted in the light of the absence of pleadings. It is the contention of the learned Counsel for the Revision Petitioner that without pleadings, the Petition in I.A.No.69 of 2018 in A.S.No.4 of 2015 belatedly allowed after filing of the Appeal. Nowhere in the Petition, the reasons stated by the Petitioner/Appellant/Plaintiff in A.S.No.4 of 2015 that he was unable to file the same before the learned trial Judge before commencement of trial. In such circumstances, the Petition cannot be allowed. As per Order XLI Rule 27 of Civil Procedure Code, a document can be filed as additional document in the appeal and



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permission sought to mark the document in Appeal only in cases where the parties to the Suit was unable to file the document in spite of due diligence. Here, the Plaintiff in O.S.No.113 of 2010 before the learned Sub Judge, Poonamallee/Appellant before the learned Principal District Judge, Tiruvallur in A.S.No.04 of 2015, the averments in the Petition is silent regarding the Order XLI Rule 27 of Civil Procedure Code. 'In spite of due diligence by the Plaintiff', the Plaintiff was unable to produce the said documents during trial. Therefore, the learned Counsel for the Revision Petitioner/Defendant in O.S.No.113 of 2020/Respondent in A.S.No.4 of 2015 had approached this Court by way of Civil Revision Petition under Article 227 of Constitution of India seeking to set aside the Order passed by the learned III Additional District Judge, Tiruvallur at Poonamalle in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019.

2.5. It is the submission of the learned Counsel for the Revision Petitioner who is the Defendant in the Suit and Respondent in the Appeal that after the full contest, on appreciation of evidence, the learned Sub Judge had dismissed the Suit. In support of his contention in I.A.No.69



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of 2018 in A.S.No.4 of 2015 that there is no pleadings in support of his contention of the Respondent in Civil Revision Petition. The Appellant in the Appeal, the Plaintiff in the Suit in O.S.No.113 of 2010 to substantiate his contention in I.A.No.69 of 2018 in A.S.No.4 of 2015.

2.6. No additional document was filed by the Plaintiff as P.W-1 in O.S.No.113 of 2010 before the trial Court, the Appellate Court ought to have rejected the documents. Under those circumstances, the Petition in I.A.No.69 of 2018 in A.S.No.4 of 2015 seeking additional documents in appeal even though the appeal was filed in the year 2015 had been allowed by the learned III Additional District Judge, Tiruvallur at Poonamallee ignoring the vehement objection by the Revision Petitioner who is the Respondent in I.A.No.69 of 2018.

2.7. It is the further contention of the learned Counsel for the Revision Petitioner that no pleadings in the Plaint to support the filing of the documents which are sought to be marked in the appeal.

2.8. The learned Counsel for the Revision Petitioner invited the



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attention of this Court to the Order passed by the learned III Additional District Judge, Tiruvallur at Poonamallee, which reads as follows:

“8. This Court on perusal of sale deeds produced by the Appellant/Petitioner finds that it would be appropriate to allow this Petition since the Appellant/Petitioner has produced documents to substantiate her case that the Plot No.2 has not been sold by Jayanthi Balakrishnan to one Raja as contended by the Defendant in the Suit. Further more the Appellant/Plaintiff has stated that the Appellant was under the belief that the Advocate Commissioner's Report filed in an earlier case in O.S.No.233/2008 would be sufficient to prove her case but the trial Court has not relied upon the said report since the certified copy of the same was not filed. Further more the Appellant/Plaintiff has stated that the present documents had been obtained only after disposal of the above Suit in O.S.No.113/2010 as against which the present Appeal has been filed.”

2.9. Also, the learned Counsel for the Revision Petitioner invited the attention of this Court to the counter filed by the Revision Petitioner herein as Respondent in A.S.No.4 of 2015, which reads as follows:

“ 5. With regard to para No.4 of this Petition I state that the trial Court has rightly framed the issues and came



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into right conclusion by dismissing the Suit filed by the Petitioner/Plaintiff/Appellant. I crave to refer the Judgment passed by the trial Court and the document marked from my side as Ex.B-1 to B-21 in the Suit in O.S.No.113 of 2010 as part and parcel of this counter. Aggrieved against the trial Court Judgment and decree, the Petitioner/Plaintiff has filed this appeal Suit in the year of 2015 and subsequently, stealthily has filed this CMP in the year 2017 (i.e., after two years) for delay in receiving documents with sole intention to protract the appeal proceedings. The documents filed by me namely, Ex.B-19 and B-21 (i.e., encumbrance Certificate) would clearly shows that my vendor and his vendor had good titles which also come to me. The present documents (delay in receiving documents) filed by the Petitioner/Appellant will in no way help the Petitioner/Appellant in the appeal case. Because, the Petitioner/Appellant is not for the claiming title Suit, but her original relief itself is for recovery of possession inter alia and other reliefs. While so, her contention in the trial Court was extensively considered and thereafter only the trial Court has dismissed the Suit is not maintainable and relief sought by the Petitioner/Appellant cannot be given. Now, this Petitioner/Appellant who is being divested her title cannot question my title by fling this present documents. This emphatically shows that the Petitioner/Appellant is trying beat around the bush and subsequently to prolong appeal



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proceedings. These alleged mentioned documents are in no way going to help or enlighten this Court then wasting the precious time of this Hon'ble Court. The trial Court has rightly observed that there is non-joinder of necessary parties, which were one of grounds for dismissing the Suit by the trial Court.

6. With regard to para 5 of this Petition I state that those averments made by the Petitioner/Appellant is nothing but travesty of the facts. Any act to be done by the Petitioner/Appellant, ought to have done while conducting the Suit in the trial Court. It is pertinent to note that “the power agent cannot not been executing the sale deed in favour of his wife name or any other blood relationship”. In view of the Hon'ble Apex Court is held in clear Judgment. In the lower Court Judgment, the trial Judge has rightly pointed out that when the Petitioner/Appellant has sold out the schedule mentioned property before and after filing Suit to the two persons namely Indumathi and Banu (power agent wife) and the sale deed has been marked as Ex.B-1 & B-2 and these instruments it is specifically stated that the buyers put into possession in the mentioned schedule of property on the date of execution of the sale deed, whereas I am in possession of Suit property. (kindly refer the Judgment in para Nos.11 & 12). It is pertinent to state that as on date the



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Petitioner/Appellant did not have any title either before filing the Suit or after filing the Suit. I further states that the Petitioner/Appellant cannot state or blame me as trespasser or encroacher of the 'B' Schedule mentioned property. The burden of proof proving the title cannot be shifted into my side; it is the Petitioner/Appellant ought to have proved her title in the trial Court. The Respondent states that there is no mist/fog/cloud in the said case; the trial Court has cleared all the mist/fog/cloud through its judgment passed dated 26.02.2014. Now, it is the Petitioner/Appellant, who is bringing the mist/fog/cloud and chaos by harping upon the so-called the additional or delay in receiving documents. The Respondents states that the present Petition filed by Petitioner/Appellant is vexatious one and also with a malafide intention to prolong the appeal proceedings and certainly prejudice will be caused to the Respondent if the Petition is going to be allowed. Infact no loss or injury will be cost to the Petitioner/Appellant obviously, since the Petitioner/Appellant is not the original owner. In the forging circumstances, the Respondent/Respondent graciously prayed that the Petition devoid on merits and liable to be dismissed in limini.”

Therefore, the Order passed in I.A.No.69 of 2018 in A.S.No.4 of 2015 is to be set aside.



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2.10. The learned Counsel for the Petitioner relied on the following reported rulings:

(I) **(2020) 10 SCC 729** in the case of ***Biraji alias Brijraji and another Vs. Surya Pratap and others*** which reads as follows:

“Civil Procedure Code, 1908 – Or. 6 R. 2 Or.7 R.14 and Or.18 R.2 – Applications to summon evidence on issue on which there was no pleading – Application filed at belated stage after evidence was closed – Non-maintainability of – Held, in absence of pleading, no amount of evidence will help the party.”

(ii) **1951 SCR 258 : AIR 1951 SC 193** in the case of ***Arjun Singh alias Puran Vs. Kartar Singh and Others***, the relevant portion is extracted hereunder:

“8. In the present case, there is nothing to show that there was any lacuna or gap which had to be filled up and that the appellate Court felt the need for the omission being supplied so that it could pronounce a judgment; to put it the other way round, it does not appear, and it was not stated, that the District Judge felt himself unable to come to a decision without copies of the settlement registers that were sought to



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be put in before him for the first time. On the other hand, the District Judge made up his mind to admit the certified copies of the kami beshi and muntakhib asami-war registers even before he heard the appeal. The Order allowing the Appellant to call the additional evidence is dated 17th March, 1942. The appeal was heard on 24th April, 1942. There was thus no examination of the evidence on the record and a decision reached that the evidence as it stood disclosed a lacuna which the Court required to be filled up for pronouncing its judgment. In the circumstances, the learned Judges of the High Court were right in holding that the District Judge was not justified in admitting this evidence under Order 41, Rule 27.”

(iii) (2012) 8 CC 148 in the case of ***Union of India Vs. Ibrahim***

Uddin and another, the relevant portion is extracted hereunder:

“ D. Evidence Act, 1872 – Ss. 65 and 74 – Public documents – General land register and other documents maintained by Cantonment Board under Cantonment Land Administration Rules – Held, public documents – Tenancy and Land Laws – Revenue Records.

E. Property Law – Lease – Lease deed – Rent note –



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Vague document – Incapable of furnishing any information, as regards who executed it and in whose favour executed, date of execution, tenure of lease and mode of payment of rent (per day, fortnightly, monthly, etc.) - No reference to rent note in pleadings contained in plaint – Held, rent note reliable to be rejected – Transfer of Property Act, 1882, Ss.106 and 107.

F. Evidence Act, 1872 – S. 114 III. (g) – Adverse inference on withholding of material evidence by a party – When can be drawn – Relevant factors for consideration of Court: pleadings of parties, relevance of documents/evidence withheld, whether application for interrogatories/inspection and production of documents, if any, made by other party in terms of Or. 11 CPC, whether documents not produced despite Court's Order – All pros and cons required to be examined by Court for deciding whether adverse inference could be drawn – Civil Procedure Code, 1908, Or.11.

G. Evidence Act, 1872 – S. 58 – Applicability – Admission of fact must be during trial, before or at the hearing – Procedure under Or. 12 CPC must also be followed – Civil Procedure Code, 1908, Or.12.

H. Evidence Act, 1872 – Ss.17 and 58 – Admission –



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Evidentiary value – Admission, held, is substantive evidence and though not conclusive can be decisive - It may operate as estoppel in certain circumstances – It must be clear, unambiguous and relevant – Maker of admission should be given opportunity under cross-examination to tender his explanation – Failure of a party to prove his defence does not amount to admission – Civil Procedure Code, 1908, Or.12 R.6.

I. Civil Procedure Code, 1908 – Or.11 Rr.14, 15, 18 and 21 – Object – Word “matter” - Meaning.

*J. Civil Procedure Code, 1908 – Or.41 R.27 – Additional evidence – Discretion of appellate Court to allow production of, in exceptional circumstances – Should be exercised judicially and with circumspection, only where any of the prerequisite conditions provided under R.27 exist.
(Paras 36 to 49)*

K. Civil Procedure Code, 1908 – Or.41 R.27 – Additional evidence – Application for production of, in appellate Court – stage of consideration -should be considered at time of final hearing of appeal on merits.

L. Civil Procedure Code, 1908 – Or.41 R.27(b) – Additional evidence – Whether should be allowed by



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appellate Court – Test to determine – If additional evidence is found to have important bearing on main issue, or found to be necessary to remove any lacuna in evidence and for clearing any doubt for pronouncing judgment and required in interest of justice, it may be allowed.

(Paras 36 to 49)

*M. Civil Procedure Code, 1908 – Or. 41 R.27(b) -
“Substantial cause” - Meaning*

*N. Civil Procedure Code, 1908 – Or. 41 R.27 (aa) –
Additional evidence – Due diligence of party seeking production of, in appellate Court – Party guilty of remissness in not producing evidence in trial Court cannot be allowed to produce it in appellate Court – There must be satisfactory reasons for non-production of the evidence in trial Court for seeking production thereof in appellate Court.*

*O. Civil Procedure Code, 1908 – Or. 41 R.27(2) –
Recording of reasons by appellate Court for allowing production of additional evidence – Purpose – Requirement is directory – However, omission to record reasons is to be treated as a serious defect – Sufficient reasons must be recorded – Significance of recording reasons – Though*



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reasons need not be recorded in a separate order but they should be embodied in appellate judgment.

P. Practice and Procedure – Judgment/Decree/Order – Recording of reasons – Court's duty – Significance of recording reasons.

Q. Civil Procedure Code, 1908 – Or. 7 Rr.7 & 8 and Or.6 Rr.2 & 4 – Pleadings – Relief, not founded on pleadings, cannot be granted – All material facts should be pleaded and party cannot be allowed to go beyond pleading.”

“37. The appellate Court should not ordinarily allow new evidence to be adduced in order to enable a party to raise a new point in appeal. Similarly, where a party on whom the onus of proving a certain point lies fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can, in such a case, pronounce Judgment against him and does not require any additional evidence to enable it to pronounce Judgment.(Vide Haji Mohammed Ishaq Vs. Mohd. Iqbal and Mohd. Ali and Co.)

39. It is not the business of the appellate Court to supplement the evidence adduced by one party or the other in the lower Court. Hence, in the absence of satisfactory



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reasons for the non-production of the evidence in the trial Court, additional evidence should not be admitted in appeal as a party guilty of remissness in the lower Court is not entitled to the indulgence of being allowed to give further evidence under this Rule. So a party who had ample opportunity to produce certain evidence in the lower Court but failed to do so or elected not to do so, cannot have it admitted in appeal. (Vide State of U.P Vs. Manbodhan Lal Srivastava and S.Rajagopal Vs. C.M.Arumugam)”

3. The learned Counsel for the Respondent who is the Appellant in A.S.No.4 of 2015 and the Plaintiff in O.S.No.113 of 2010 objected to the line of the arguments of the learned Counsel for the Petitioner stating the claim of the Petitioner that “no pleadings in the Plaint by the Plaintiff” cannot be accepted. The documents placed before the Appellate Court is pertaining to the property which is claimed to have been purchased by the Petitioner in this Petition.

3.1. The learned Counsel for the Respondent invited the attention of this Court to the written statement filed by the Revision Petitioner as Defendant in O.S.No.113 of 2010, the relevant portion is extracted



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hereunder:

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“6. The Defendant respectfully submits that this Defendant admit para No.7 of the Plaint in the middle portion a Civil Suit in O.S.No.233/2008 on the file of Hon'ble District Munsiff, Ambattur. As per the averments in the said Suit, the Defendant claims to have entered into an unregistered sale agreement deed dated 07.01.2001 one Mr.S.Sudharsan, claiming under one Mr.S.Raja and thus entered into possession of the Suit property is correct one. At request of the Defendant, the said S.Sudarshan was kindly considered and received the balance sale consideration amounts of Rs.40,000/- and Rs.22,000/- dated 22/08/01 & 15/02/01 after completion of one month period as mentioned in the unregistered sale agreement deed dated 07.01.2001. On the day itself the above said person Mr.S.Sudharsan had handed over possession to the Defendant and right from that date he was put up hut and living along with family members and they are in possession and enjoyment of the 'B' schedule Suit property for the past 9 years. After completion of nine years i.e., in the month of April, 2008 this Plaintiff along with rowdy elements were came to the 'B' Schedule of property herein and threatened to evict from the said property, unless he and his family members are vacated in the said property they will be killed by them and faced dare consequences. Hence without



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any other alternative this Defendant filed the Original Suit in O.S.No.233/2008 on the file of DMC at Ambattur for seeking relief of permanent injunction restraining from interfering with this Defendant's property against this Plaintiff and another.”

3.2. He also invited the attention of this Court to the Judgment wherein Ex.A-5 is marked as Advocate Commissioner's Report filed in O.S.No.233 of 2008 in the list of documents in support of the Plaintiff's case.

3.3. By virtue of the order of the Appellate Court, only Civil Revision Petition had been filed. It is submitted by the learned Counsel for the Respondent that the Appellate Court ordered for the continuation of trial proceedings. But the documents filed by the Defendant in O.S.No.113 of 2010 in B series will not create title in favour of the Petitioner herein who is the Defendant in the Suit. The three sale deeds referred in the Order of the learned III Additional District Judge, Tiruvallur at Poonamallee are the documents relied by the Petitioner in I.A.No.69 of 2018 who is the Appellant in A.S.No.4 of 2015 and the



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Plaintiff in O.S.No.113 of 2010. Therefore, there is no error. The Defendant ought to have filed it by filing these documents alone. The Respondent in appeal, the Defendant in the Suit, the Revision Petitioner herein is in no way prejudiced. He can always subject the Appellant before the Appellate Court and the Plaintiff before the learned Sub Judge in O.S.No.113/2010 to cross examine the subject to the relevance of proof and admissibility. By allowing this Petition by the learned III Additional District Judge, Tiruvallur at Poonamallee, the Respondent in the Appeal, the Defendant in the Suit is no way prejudiced. Therefore, this Petition filed for seeking to set aside the order passed by the learned III Additional District Judge in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 is to be dismissed.

4. By way of rejoinder, the learned Counsel for the Petitioner sought to set aside the Order in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 on the ground that there is a specific finding given by the learned Subordinate Judge, Poonamallee in O.S.No.113 of 2010, the relevant portion is extracted hereunder:



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11. *The learned Counsel for the Defendant would submit that the Plaintiff prior to the filing of the present Suit sold part of 'A' schedule property in favour of one Indumathi by Sale deed dated 31.05.2010, the same has been marked as Ex.B-1. Perusal of Ex.B-1 reveals that the said instrument has been executed pertaining to 1279 sq. ft in S.No.13 C and Plot No.3. Similarly, it is the contention of the Defendant that the Plaintiff has sold the remaining part of 'A' schedule property, i.e., 'B' schedule property in favour of one Banu, who is the wife of the Power of Attorney of the Plaintiff by sale deed dated 21.07.2010. The said sale deed has been marked as Ex.B-2. Perusal of Ex.B-2 reveals that the same is pertaining to 1258 Sq. ft of land comprised in S.No.78/13 C and Plot No.3. The present Suit was filed on 24.06.2010. Ex.B-1 is prior to the filing of the present Suit and Ex.B-2 is one month subsequent to the filing of the present Suit.*

12. *Both Ex.B-1 & B-2 were marked through the cross examination of P.W-1. P.W-1 has admitted execution and contents of both the instruments. In Ex.B-1 & B-2 it has been specifically stated that the possession of the properties conveyed under the said instruments have been handed over to the buyer as on date of execution of sale deed. The same may be true pertaining to Ex.B-1, but as far as Ex.B-2 is concerned admittedly the same is relating to the 'B' schedule*



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property in the present Suit. When it is the contention of the Plaintiff in the present Suit that the 'B' schedule property has been occupied by the Defendant during September 2007 and the Suit is for recovery of vacant possession, it is for the Plaintiff to explain how she can handed over possession of the said property to the buyer under Ex.B-2 as on date of execution of Ex.B-2.

13. It is evident from Ex.B-1 & B-2 that the Plaintiff is no longer having any right in Plot No.3. Therefore, she is not entitled either for recovery of possession of 'B' schedule or Permanent Injunction with respect to the 'A' schedule property. It is pertinent to note that the entire Plot No.3 has been shown as 'A' schedule property and 'B' schedule property has been shown as encroached portion to an extent of 1250 Sq. ft., but the Plaintiff is claiming permanent injunction with respect to her possession of entire 'A' schedule property. Similarly the Plaintiff is claiming possession of 'B' schedule property which is forming part of 'A' schedule property. Therefore, the prayer for recovery of possession as well as permanent injunction are contrary to each other.

In the light of the above, the learned Counsel for the Revision Petitioner seeks to allow this revision Petition and to set aside the Order



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in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 by the learned III Additional District Judge, Tiruvallur at Poonamallee.

5. On consideration of the rival submissions and on perusal of the Order passed by the learned III Additional District Judge, Tiruvallur at Poonamallee in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019, the Judgment in O.S.No.113 of 2010 as well as the averments in Plaint in O.S.No.113 of 2010 and the written statement in O.S.No.113 of 2010, the reasons stated by the learned Counsel for the Petitioner is found acceptable considering the fact that the appellate Court is continuation of the trial proceedings, the Appellate Court has power and discretion to re-assess the evidence before the trial Court. Also it has power to permit the parties to adduce additional evidence. But on condition inspite of due diligence, the parties to the Suit before the trial Court could not get the documents. In spite of due diligence, the said position of law is re-iterated in the following reported rulings cited by the learned Counsel for the Petitioner:

(I) **(2020) 10 SCC 729** in the case of ***Biraji alias Brijraji and another Vs. Surya Pratap and others.***

(ii) **1951 SCR 258 : AIR 1951 SC 193** in the case of ***Arjun Singh***



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alias Puran Vs. Kartar Singh and Others.

(iii) (2012) 8 CC 148 in the case of Union of India Vs. Ibrahim Uddin and another.

5.1. Here in this case, when the Defendant had filed written statement with specific denial of the contents of the Plaint, the Plaintiff ought to have filed reply statement to the written statement i.e., by way of pleadings by meeting the specific pleadings of the Defendant denying the contents of the Plaint. Also, the specific averment of the Defendant is regarding the sale by the Plaintiff. The Plaintiff is the wife, the Respondent is the Power of Attorney. He had instituted the Suit. He had deposed the evidence on behalf of his wife. He had executed the sale deed in favour of his Wife. The Defendant had in the written statement stated that originally remaining part of 'A' schedule property was sold to one Mr.Kannan who is the husband of the said Pavunammal. He had purchased the same from one S.Raja, vide sale deed dated 31.05.2001 bearing document No.2695/2001 at SRO, Ambattur. But without adding necessary party of one Mr.Kannan, the Plaintiff herein filed the alleged Suit in O.S.No.295 of 2008 against this Defendant and said Pavunammal



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on the file of the learned District Munsif at Ambattur by suppressing the real fact. Therefore, the Suit is barred for non-joinder of necessary party.



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5.2. When there is specific averments in the written statement claiming title and referring to perverse litigation, the Plaintiff had not filed reply statement by pleading wherein he ought to have stated the very same fact that is now stated in I.A.No.69 of 2018 in O.S.No.113 of 2010 in A.S.No.4 of 2015. Therefore, the contention of the learned Counsel for the Respondent in A.S.No.4 of 2015 and the Revision Petitioner herein that he is prejudiced that there is no pleadings in support of the Plaintiff in the Plaint averments. Therefore, attempt of the Appellant in A.S.No.4 of 2015 seeking to mark the document cannot be accepted is found acceptable in the light of the reported ruling cited by the learned Counsel for the Revision Petitioner. Also, there is no specific averment in I.A.No.69 of 2018 by the Appellant who is the Plaintiff in O.S.No.113 of 2010, *“in spite of due diligence, he was unable to get this document prior to the commencement of the trial.”*

5.3. Only, if the learned trial Judge had rejected the similar Petition seeking to file additional document in the trial or in spite of specific averment in the Plaint regarding the very same transaction. As of now



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stated in the I.A.No.69 of 2018 by way of reply statement, this document could have been marked during the trial. The Plaintiff in O.S.No.113 of 2010 had not done so. Apart from all those facts in the cross examination, he had specifically admitted the fact of the sale of the property to the Defendant and to his vendors which is clearly stated by the learned Sub Judge while dismissing the Suit against the Plaintiff that the Plaintiff does not have any claim or right or title for recovery of possession from the Defendant. The admission is the best evidence as per the Provisions of Evidence Act. When P.W-1 in the cross examination had admitted to the fact, the learned trial Judge had relied on the very same admission to reject the claim of the Plaintiff and arriving at a clear conclusion that the contention of the learned Counsel for the Plaintiff is to be rejected. Therefore, the contention of the learned Counsel for the Respondent that the Appeal is continuation of the trial proceedings. The Appellate Court has also discretion, power to record evidence by merely allowing this Petition. The Respondent in Appeal as well as Respondent in I.A.No.69 of 2018 is not prejudiced as he can cross examine the Appellant as P.W-1 regarding the documents that is sought to be marked, in three sale deeds viz., (I) Sale deed in favour of Jayanthi



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Balakrishnan, (ii) Sale deed in favour of Rajan (iii) Sale deed in favour of Kannan will not help the case of the Plaintiff/Appellant. It is an exercise in futility and it is a violation of Order XLI Rule 27 of Civil Procedure Code. As rightly contended by the learned Counsel for the Revision Petitioner by placing reliance on the rulings reported in (i) **(2020) 10 SCC 729** in the case of ***Biraji alias Brijraji and another Vs. Surya Pratap and others.*** (ii) **1951 SCR 258 : AIR 1951 SC 193** in the case of ***Arjun Singh alias Puran Vs. Kartar Singh and Others.*** (iii) **(2012) 8 CC 148** in the case of ***Union of India Vs. Ibrahim Uddin and another*** that at the appellate stage, the Plaintiff cannot furnish the pleadings in support of marking of the said documents.

5.4. In continuation of the Plaint pleadings after filing of the written statement, if the Plaintiff had filed reply statement giving out very same pleadings which is stated in the I.A.No.69 of 2018 before the commencement of trial the Petition under Order XLI Rule 27 of Civil Procedure Code does not arise at all. In the affidavit in such reply statement was filed in spite of due diligence, the Plaintiff was unable to



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produce the document. The certified copy of the sale deed is sought to be marked during the trial. In such circumstances, the Petition in I.A.No.69 of 2018 is filed in A.S.No.4 of 205 could be accepted on the ground that in spite of due diligence, the Plaintiff was unable to produce the document, due to the circumstances, beyond the control of the Plaintiff. Here those circumstances does not at all arise. There is no specific pleadings in support of the Plaintiff regarding the sale transaction from Jayanthi Balakrishnan to Allaudeen, Allaudeen to Mohammed Bakrid, Mohammed Bakrid to Mercy Nalinikumari. In continuation of the plaint averments, in the absence of the Plaint averments, the document sought to be marked in appeal and any amount of evidence without pleading will not help the Plaintiff. Therefore, it is an exercise in futility. Hence, the order passed by the learned III Additional District Judge, Tiruvallur at Poonamallee in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 is found perverse.

In the result, this ***Civil Revision Petition is allowed.***

The Order passed by the learned III Additional District Judge, Tiruvallur at Poonamallee in I.A.No.69 of 2018 in A.S.No.4 of 2015 dated 27.04.2019 is set aside. Consequently, connected Miscellaneous



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Petition is closed. No costs.

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25.11.2022

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The learned III Additional District Judge,
Tiruvallur at Poonamallee.
2. The learned Subordinate Judge,
Poonamallee.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
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25.11.2022