



C.R.P.No.870 of 2021
and C.M.P.Nos.7146 & 9988 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2022

CORAM:

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.870 of 2021

and

C.M.P.Nos.7146 & 9988 of 2021

1.Amudha

2.Muniammal

3.Pokkilaiammal

4.Mariamamma

... Petitioners

Vs.

1.Mouttuammale alias Shanthi

2.Arumugam

3.Munisamy

4.Chinnaponnu

5.Munian alias Ravi

6.Muniammal

7.Sundari @ Sundarambal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the impugned fair and decreetal orders dated 22.01.2021 in I.A.No.282 of 2020 in A.S.No.38 of 2019 on the file of the Additional Sub Court, Puducherry.



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For Petitioners : Ms.L.Lakshmi Swaroopa
For RR1 to 3 : Ms.Elizabeth Ravi

ORDER

The revision petitioners are the appellants in A.S. No.38/2019 on the file of the Subordinate Court, Puducherry. They filed the appeal against the decree and judgment passed in O.S. No.262/2008 on the file of the III Additional District Munsif, Puducherry. During the pendency of the appeal, the revision petitioners filed an Interlocutory Application in I.A. No.282/2020 under Order XLI Rule 27 CPC to receive additional documents in the appeal. The learned Additional Subordinate Judge dismissed the said application vide his orders dated 22.01.2021 on the ground that the documents would not be useful to prove the factum of marriage between the 1st plaintiff and the 5th defendant and that all the documents sought to be marked at the appellate stage are not necessary for the proper adjudication of the appeal. Aggrieved over the same, the present Civil Revision Petition is filed by the appellants in A.S.



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No.38/2019.

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2. Heard Ms.L.Lakshmi Swaroopa, learned counsel appearing for the revision petitioners and Ms.Elizabeth Ravi, learned counsel appearing for the respondents 1 to 3.

3. The counsel for the revision petitioners relied on the decision in ***Union of India vs. Ibrahim Uddin and another*** reported in **(2012) 8 SCC 148**, wherein it has been held thus:

"52.... from the above, it is crystal clear that an 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 the 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



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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."

4. In the instant case, the application under Order XLI Rule 27 CPC was filed after the filing of the appeal and it was dismissed by the lower appellate court even without taking up the appeal. In the decision ***Union of India vs. Ibrahim Uddin and another*** (cited supra), it has been held that the application for taking additional evidence on record should be considered only at the time of hearing the appeal and not prior to the hearing of the appeal. A Single Judge of this Court vide orders dated 09.09.2021 in CRP No.2979/2016, after following various decisions of this Court, had held thus:

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



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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



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receiving additional documents even before hearing the appeal is erroneous.

5. The learned counsel appearing for the respondents 1 to 3 fairly conceded that the lower appellate court may be directed to hear the petition filed under Order XLI Rule 27 CPC to receive the documents at the time of hearing the appeal.

6. Recording the above submissions made by the learned counsel for the respondents, the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petitions are closed. The fair and decreetal orders dated 22.01.2021 in I.A.No.282 of 2020 in A.S.No.38 of 2019 on the file of the Additional Subordinate Court, Puducherry. is set aside. The lower appellate court is directed to take I.A. No.282 of 2020 on file and decide it on merits along with A.S. No.38/2019.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

1. The Additional Subordinate Judge, Puducherry.
2. The Section Officer, VR Section, High Court, Madras.

R. HEMALATHA, J.

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