



C.R.P.No.1885 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1885 of 2019
and C.M.P.No.12412 of 2019

Kumaravel .. Petitioner
Vs.
Pappan @ Palanisamy .. Respondent

Prayer : Civil Revision Petition filed under Section 115 of CPC to set aside the fair and decreetal order dated 26.03.2019 passed in I.A.No.68 of 2017 in A.S.No.10 of 2016 on the file of the Sub Court, Udumalpet.

For Petitioner : Mr.P.Srinivas
For Respondent : Mr.N.Krishna Kumar
for M/s Sarvabhauman Associates

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 26.03.2019 passed in I.A.No.68 of 2017 in A.S.No.10 of 2016 on the file of the Sub Court, Udumalpet, thereby allowing the petition to receive additional documents in the Appeal Suit.

2. The petitioner filed a suit in O.S.No.15 of 2009 for declaration and



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injunction. The said suit was decreed in favour of the petitioner. Aggrieved by

the same, the respondent filed an Appeal Suit in A.S.No.10 of 2016. Pending the Appeal Suit, the respondent filed an application in I.A.No.68 of 2017 in A.S.No.10 of 2016 under Order 41 Rule 27 of CPC to receive additional documents as evidence in the Appeal Suit and the same was allowed. Aggrieved by the same, the petitioner herein preferred Civil Revision Petition in C.R.P.(PD).No.1815 of 2018. This Court, by an order dated 31.07.2018 allowed the Civil Revision Petition and directed the first Appellate Court to pass appropriate order along with the Appeal Suit in accordance with law.

3. The first Appellate Court allowed the Interlocutory Application in I.A.No.68 of 2017 on 26.03.2019 filed by the respondent herein and permitted the respondent herein to mark the documents as additional evidence in the Appeal Suit, without passing any order in the Appeal Suit. This Court categorically directed the First Appellate Court on relying upon the Judgment passed by the Hon'ble Supreme Court of India that in the application filed under Order 41 Rule 27 of CPC, it has to be decided along with the Appeal Suit and it should not be decided separately. On this ground alone, the impugned order cannot be sustained and it is liable to be set aside.



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4. Accordingly, the fair and decreetal order dated 26.03.2019 passed in I.A.No.68 of 2017 in A.S.No.10 of 2016 on the file of the Sub Court, Udumalpet, is hereby set aside. The first Appellate Court is directed to dispose of the Interlocutory Application and the Appeal Suit, within a period of eight weeks from the date of receipt of a copy of this order.

5. It is made clear that when the First Appellate Court intended to permit the respondent to receive the additional documents as evidence in the Appeal Suit, after considering the documents which are proposed to be marked as evidence in the Appeal Suit, the First Appellate Court shall pass orders both in Appeal suit and Interlocutory Application.

6. Accordingly, this Civil Revision Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

mn

To

The Sub Court, Udumalpet.

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