



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.04.2022**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

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**C.R.P (MD)No.524 of 2018**

**and**

**C.M.P (MD)No.2289 of 2018**

- 1.Service and Education for Village  
Awareness and Improvement Society  
(Madurai),  
Represented through its Present Secretary,  
John Britto.
- 2.Benedict Matriculation School,  
Anaimalayanpatti,  
Represented through Its Manager and Correspondent  
P.A.Peter.

... Petitioners/  
Respondents/Respondents

Vs.

- 1.J.Thomas
- 2.Kala @ Padmavathi
- 3.P.Anbazhagan

... Respondents 1 & 2/  
Petitioners/Appellants

... 3<sup>rd</sup> Respondent/  
3<sup>rd</sup> Respondent/3<sup>rd</sup> Respondent

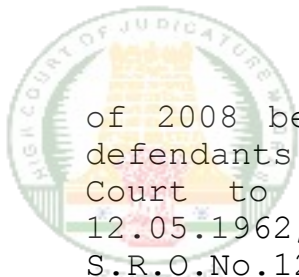
**PRAYER** : Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order, dated, 15.12.2017, made in I.A.No.21 of 2017 in A.S.No.15 of 2008 on the file of Sub-Court, Uthamapalayam.

|                 |                                                                 |
|-----------------|-----------------------------------------------------------------|
| For Petitioners | : Mr.V.George Raja<br>for M/s.Ajmal Associates                  |
| For Respondents | : Mr.DD.Nallathambi<br>for R1 and R2<br>No Appearance<br>for R3 |

**ORDER**

The plaintiffs are the revision petitioner.

2. The plaintiffs filed a suit for declaration of title and permanent injunction. The suit was decreed as prayed for. The counter claim filed by the defendants was dismissed by the trial Court. Challenging the same, the defendants 2 and 3 filed A.S.No.15

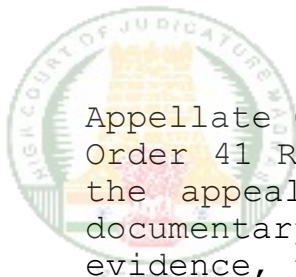


of 2008 before Sub-Court, Uthmapalayam. Pending first appeal, the defendants 2 and 3 filed I.A.No.21 of 2017 seeking permission of the Court to mark a certified copy of the partition deed, dated, 12.05.1962, registered before Sub Registrar Office, Uthamapalayam in S.R.O.No.1229 of 1962.

3. The plaintiffs/decreed holders filed a counter objecting to the same on the ground that there is no reference about the said document in the written statement and hence, the document cannot be received. That apart, the plaintiffs/respondents have contended that the defendants have not properly explained the reason for non filing of the said document before the trial Court. After hearing both the parties, the appellate Court had arrived at a finding that the proposed document, dated, 12.05.1962 is referred to in Exhibit A.1 as one of the parent documents. Based upon the said findings, the trial court allowed the application and permitted the defendants/appellants to present the said document at the appellate stage. Aggrieved over the same, the present Civil Revision Petition has been filed by the plaintiffs.

4. The learned counsel for the petitioners had contended that there is no pleading with regard to the proposed document in the written statement and hence, the First Appellate Court ought not to have accepted an application for the receipt of additional evidence. The learned counsel for the petitioners further contended that the defendants have not satisfied the ingredients of Order 41 Rule 27 and hence, the application should not have been allowed. He further contended that the additional evidence application ought to have been heard along with the main appeal and should not have been decided independently. He further contended that if new documents are received in the appellate stage, the plaintiff/decreed holder will put it to great prejudice and it would take away the vested rights of the plaintiffs.

5. Per contra, the learned counsel for the respondents/defendants contended that the plaintiffs are tracing their title through documents marked as Exhibits A.1 to A.3. According to the learned counsel for the respondents, the proposed document is shown as one of the parent document in Exhibit A.1, which has already been marked by the plaintiff. Since the plaintiff himself traces his title through the proposed documents, the plaintiff cannot have any grievance for marking the said document. The learned counsel for the respondents further relied upon the judgment of the Hon'ble Supreme Court reported in 2018 (9)SCC 445 to contend that additional evidence application should be decided independently and opportunity should be given to the other side to rebut the evidence and hence additional evidence application cannot be taken up along with the appeal. The Hon'ble Supreme Court has laid that after receiving the additional evidence, the First



Appellate Court has to strictly follow the procedure contemplated on Order 41 Rule 28 of the Code of Civil Procedure. The respondents in the appeal should be given ample opportunity to let in oral or documentary evidence to the extent of rebuttal of the additional evidence, that was produced by the appellant.

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6. In view of the above said discussion, the order passed in I.A.No.21 of 2017 is confirmed. The First Appellate Court is directed to strictly follow the judgment of the Supreme Court as referred to supra. It is made clear that the application under Order 41 Rule 27 has been allowed only to the extent of marking the said document by examining one Seenithevar. Allowing of the said application will not in any manner, permit the defendants/appellants to examine any other witnesses. The plaintiffs/respondents are entitled to let in oral or documentary evidence only to extent of rebuttal evidence of the additional document marked.

7. Accordingly, this Civil Revision Petition is partly allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gbg

### **Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Sub-Judge, Uthamapalayam.

2.The Record Keeper, Vernacular Section,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-20032[F] dated  
21/04/2022 )

**C.R.P (MD)No.524 of 2018**  
**20.04.2022**

RD(13.05.2022) 3P 5C

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