



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
CIVIL APPELLATE JURISDICTION**

WEDNESDAY, THE THIRTIETH DAY OF MARCH TWO THOUSAND AND TWENTY TWO

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PRESENT

**THE HON`BLE MS.JUSTICE R.N.MANJULA
CMP (MD) NO. 6313 OF 2016
IN
AS (MD) . NO. 32 OF 2016**

1. Mariappan
2. Pechiammal
3. Saravana Selvam

... Petitioners/Appellants

Vs

1. Saraswathi
2. Rajeswari
3. Mariappan
4. Murugan
5. Santhanaselvi
6. Sumathi
7. Arunkumar @ Raja

... Respondents/ Respondents

Prayer in CMP(MD)No. 6313 OF 2016 :-

This Civil Miscellaneous petition filed order -41 Rule 27 R/W SEC 151 OF C.P.C., to receive the documents as Additional Evidence and mark the same in the above Appeal.

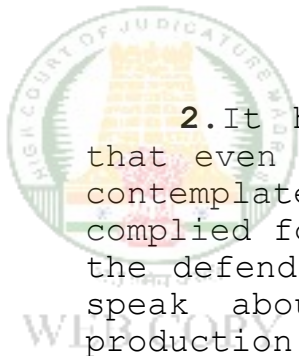
Prayer IN AS (MD) 32 OF 2016 :-

First Appeal filed under Section 96 of CPC, Preferred against the Judgment and Decree made in OS No.12 of 2013, dated 02.09.2014, on the file of II Additional District Court, Thoothukudi.

ORDER:-

This Miscellaneous petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.J.Karthick, for Mr.R.Subramanian, Advocate for the Petitioners, this Court made the following order:

During the pendency of this appeal, the learned counsel for the appellants/defendants filed this petition to receive additional evidence namely, the returned summon sent to one of the attestors and the field map in respect of item No.1 of the suit property and the extract of Town Survey Register in the name of Shanmugavel, in respect of item No.1.



2.It has been dealt at length in the judgment of the appeal that even if the attesting witness is not available, the procedure contemplated under Section 69 of Indian Evidence Act, should be complied for the purposing of proving the Will. In the case on hand, the defendant, who is the daughter of one of the attestors did not speak about the signature of the attestor. Even without the production of the returned summons the evidence available on record itself is sufficient to decide the matter.

3. In respect of other documents also, there is no reason stated as to why these documents were not produced before the trial Court. As per Order 41 Rule 27 CPC, only under certain circumstances, the additional evidence can be received in Appeal. For a better understanding, the said provision is extracted hereunder:-

27. Production of Additional Evidence in Appellate Court.

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

4. In the case on hand, it is not proved before this Court that the trial Court had refused to receive the evidence now sought to be produced before this Court or that those documents could not be produced before the court even after exercising due diligence. On the face of it, it can be said that the additional evidence now sought to be produced will not in any way strengthen the case of the appellants/defendants. Hence, I find no reason to receive the additional evidence.



5. In the result, this petition is dismissed.

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Sd/-

Assistant Registrar (CS-I)

/ /2022

Sub Assistant Registrar(CS)

TO:-

The II Additional District Judge,
Thoothukudi.

ORDER DATED : 30/03/2022

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ORDER

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CMP (MD) 6313 OF 2016

IN

AS (MD) . No.32 of 2016

Giving direction and etc.
as stated within.

sp (CO)

GC (01.06.2022) 3P 2C