



C.R.P.(MD).No.492 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.492 of 2023

K.Thilagavathi

... Petitioner

-VS-

K.N.Rajaram (Died)

1.R.Rajeshwari

2.S.Muthuvijaya

3.Uma Maheswari

4.Murugan

... Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to direct the Subordinate Court, Sivakasi to decide I.A.No.4 of 2022 in A.S.No.4 of 2010 against O.S.No.51 of 2004 on the file of the District Munsif, Sivakasi separately within a time frame as fixed by this Court.

For Petitioner : Mr.T.Lenin Kumar



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ORDER

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The unsuccessful defendant in a suit for declaration of title, recovery of possession and mandatory injunction had filed A.S.No.4 of 2010 on the file of the Subordinate Court, Sivakasi. Pending first appeal, the appellant/revision petitioner had filed I.A.No.4 of 2022 under Order 41 Rule 27 C.P.C for reception of additional evidence.

2.According to the learned counsel appearing for the petitioner, the First Appellate Court has posted the appeal for final hearing in order to take up the additional evidence application along with the first appeal. Therefore, the present revision petition has been filed by the appellant seeking a direction to the Subordinate Judge to decide I.A.No.4 of 2022 separately within a time frame fixed by this Court.

3.The learned counsel for the petitioner had relied upon a judgment of the Hon'ble Supreme Court reported in **(2018) 9 SCC 445 (Corporation of Madras and another -vs- M.Parthasarathy and others)** wherein Paragraph No.13 is extracted as follows:

“13.First, it took into consideration the additional piece of evidence while deciding the appeals on merits without affording any opportunity to the appellants herein (who were respondents in the first appeals) to file any rebuttal evidence to counter the additional



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evidence adduced by the respondents (appellants before the first appellate Court). This caused prejudice to the appellants herein because they suffered the adverse order from the appellate Court on the basis of additional evidence adduced by the respondents for the first time in appeal against them. (See LAO v.H.Narayanaiah, Shalimar Chemical Works Ltd., Vs. Surendra Oil & Dal Mills and Akhilesh Singh V.Lal Babu Singh)

4.A perusal of the judgement clearly indicates that any application for reception of additional evidence under Order 41 Rule 27 has to be taken up separately before the final hearing of the appeal. In case, if the First Appellate Court arrives at a finding that the documents are admissible in evidence, the petitioner shall be permitted to let in oral evidence so as to mark the said document. Without oral evidence, the question of marking the document would not arise. That apart, unless the oral evidence is let in by the party who had filed an application for additional evidence, the other side will not get an opportunity to rebut the said evidence. Therefore, the practice of taking up the additional evidence application along with main appeal has been deprecated by the Hon'ble Supreme Court. Moreover , it will be in violation of Order 41 Rule 28 C.P.C.



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5.In view of the above said facts, this Court is inclined to pass the following order:

“The Subordinate Judge Sivakasi is directed to decide I.A.No.4 of 2022 separately before taking up the appeal in A.S.No.4 of 2010 for final hearing and pass orders to the effect whether additional evidence application should be allowed or not. Thereafter, depending upon the result of the said application, after strictly following the Judgement of the Hon'ble Supreme Court and Order 41 Rule 27 and 28 C.P.C. shall proceed with the hearing of the first appeal.”

6.With the above said observations, the present civil revision petition stands disposed of. No costs.

22.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Subordinate Judge, Sivakasi
2. The District Munsif, Sivakasi
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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