



C.R.P.(MD) Nos.2020 and 2096 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD) Nos.2020 and 2096 of 2023

and

C.M.P(MD) Nos.10088 and 10576 of 2023

1.Gurusamy

2.Mangathayammal

... Petitioners
(in both cases)

Vs.

Virumandi (died)

1.Saroja

2.Jeyaseelan

3.Saravanan

4.Rajeswari

5.Latcham

6.Vairamani

Periysamy (died)

Virumandi (died)

7.Paulraj

8.Petchiammal

9.Kasiammal



C.R.P.(MD) Nos.2020 and 2096 of 2023

10.Parameswari

11.Kaluvayee

Chandrasekar(died)

12.Kasi

13.Latha

14.Rajeswari

15.Prabhakaran

16.Minor.Priyadharshini

... Respondents

(in both cases)

Common Prayer :- Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal orders dated 28.06.2023 made in I.A.Nos.68 of 2011 and 272 of 2008 in A.S.No.167 of 2007 on the file of the learned III Subordinate Court, Madurai.

For Petitioner : Mr.R.G.Shankar Ganesh

For Respondents : Mr.M.Arjunvarman
for M/s.Lajapathi Roy and Associates
(in both cases)

COMMON ORDER

The above civil revision petitions are filed as against the orders dated 28.06.2023 made in I.A.Nos.68 of 2011 and 272 of 2008 in



C.R.P.(MD) Nos.2020 and 2096 of 2023

WEB COPY

A.S.No.167 of 2007 on the file of the learned III Additional Subordinate Judge, Madurai.

2. The suit in O.S.No.280 of 2004 was filed by the plaintiffs/respondents 1 to 4 for declaration of title and also for permanent injunction and the same was dismissed. Against which, the plaintiffs preferred an appeal in A.S.No.167 of 2007. During the pendency of the above appeal suit, the plaintiffs filed the applications in I.A.Nos.68 of 2011 and 272 of 2008 under Order 41 Rule 27 to receive certain documents as additional evidence in the appeal suit. In the said petition, it is averred that after filing the appeal, the plaintiffs came to know about certain documents through which they can establish their title in the suit property. The same is resisted on the side of the defendants stating that the above documents are contrary to the averments made in the plaint. The plaintiffs have stated that the father of the plaintiffs acquired title to the property by virtue of the document dated 23.08.1946, whereas the plaintiffs intended to mark a document pertaining to the year 1941 by stating that they derived their title from



C.R.P.(MD) Nos.2020 and 2096 of 2023

year 1941 and therefore, the same cannot be permitted. The trial Court after considering the averments made in the petition and the counter affidavit and the arguments put forth by the respective counsel, allowed the said applications. Aggrieved by this, the present revisions are preferred.

3. The learned counsel for the petitioners would submit that the plaintiffs have already traced their title by virtue of a document dated 23.08.1946 and the first appellate Court failed to observe that the document dated 07.04.1941 is in no way relevant to the appeal. The plaintiffs cannot seek to trace the title to the suit property in a different manner by filing additional document, which is no way connected to the present appeal. It is further contended that no proper reasons assigned by the plaintiffs to accept the documents as additional evidence. He would further submit that the Appellate Court has the power to allow additional evidence not only if it require such evidence to enable it to pronounce judgment but also for any other substantial cause. There may well be cases where even though the Court finds that it is able to



C.R.P.(MD) Nos.2020 and 2096 of 2023

pronounce judgment on the state of the record as it is, and so, it cannot strictly say that it requires additional evidence to enable it to pronounce judgment and it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence for any other substantial cause under Rule 27(1)(b) of the Code. It is easy to see that such requirement of the Court to enable it to pronounce judgment or for any other substantial cause is not likely to arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination of evidence. He would further submit that the Appellate Court was bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision for reception of additional evidence as has been prayed by the appellant was necessary. To support his contention, he has relied upon the decision cases reported in *1963 Legal Eagle (SC) 30* and *2007 Legal Eagle (SC) 1080*.



C.R.P.(MD) Nos.2020 and 2096 of 2023

WEB COPY

4. On the other hand, the learned counsel appearing for the respondents 1 to 4 would submit that the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit. Therefore, in the interest of justice, the above applications are allowed, which call for no interference. To support his contention, he has relied upon the decision reported in **2022 LiveLaw (SC) 268**.

5. As observed in the decision relied on by the learned counsel for the revision petitioner, the Appellate Court has the power to allow the additional evidence unless some inherent lacuna or defect becomes apparent on an examination of the evidence, which is not found in the present case. It is only an additional evidence intend to remove the cloud of doubt over the suit property and it cannot be construed as an evidence which is a fresh evidence that is not marked before the First Appellate Court. Therefore, in the interest of justice the First Appellate Court is bound to consider the entire evidence on record and come to an independent finding for arriving at a just decision. Hence, no infirmity is



C.R.P.(MD) Nos.2020 and 2096 of 2023

found in the orders of the First Appellate Court and the same is confirmed. The petitioners are at liberty to produce the rebuttable evidence in this regard before the appellate Court.

6. In the result, these Civil Revision Petitions are dismissed.

No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
cp

To

The III Additional Subordinate Judge,

Madurai.



WEB COPY



C.R.P.(MD) Nos.2020 and 2096 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

cp

C.R.P.(MD) Nos.2020 and 2096 of 2023
and
C.M.P(MD) Nos.10088 and 10576 of 2023

Dated: 13.09.2023