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CRP.No.1454 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

CRP.No.1454 of 2024
and CMP.Nos.7806 of 2024

1.Shanmugasundaram
2.Kalyanasundaram

... Petitioners

Vs

1.R.Shanmugam
2.M.Ramasamy
3.M.Govindhasamy
4.Deivasigamani
5.Thulasimani

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and final order dated 09.01.2024 made in I.A.No.4 of 2023 in A.S.No.5 of 2023 on the file of the learned Principal Subordinate Judge, Tiruppur, by allowing this civil revision petition.

For Petitioners : Mr.N.S.Suganthan

For Respondents : Mr.H.Manojin



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ORDER

The revision petitioners herein are the fourth and fifth defendant in O.S.No.22 of 2005, which was filed by the first respondent /plaintiff seeking partition of suit schedule properties and for permanent injunction before the Additional District Munsif, Tirupur. The plaintiff was unsuccessful in his suit, aggrieved by which, he filed an appeal in A.S.No.5 of 2023 before the Principal Sub Court, Tirupur. Pending the appeal, the plaintiff preferred an application in I.A.No.04 of 2013, seeking leave of the Appellate Court to produce certain documents. That application came to be allowed. Hence, this revision by the defendants 4 and 5.

2. It is settled by the Supreme Court in ***Union of India Vs. Ibrahim Uddin*** [(2012) 8 SCC 148] that an application under Order XLI Rule 27 has to be heard along with the appeal. It is not open to the Court to first hear an application under Order XLI Rule 27, and thereafter, hear the appeal. During the course of hearing an appeal, if the learned Appellate Judge feels that an additional document that has been presented by the appellant or the



respondent is necessary for him to dispose of the appeal, then the document can be received as an additional evidence under Order XLI Rule 27. Needless to point out that in case the additional document is permitted by the appellate Court to be filed under Order XLI Rule 27, and unless the said document is a public record under Section 74 of the Evidence Act, the procedure under Order XLI Rule 28 would necessarily have to be followed.

3. In the present case, the learned Judge has treated the application filed under Order XLI Rule 27 separately from the appeal. In other words, keeping the appeal pending, the learned Judge has allowed the application under Order XLI Rule 27. Hence, the procedure is improper.

4. Therefore, the impugned order dated 09.01.2024, passed by the Principal Subordinate Judge, Tiruppur in I.A.No.4 of 2023 in AS.No.5 of 2023 is set aside, and the learned Judge shall take up the appeal and the application together, and if the learned Judge feels that the records that have been produced by the appellant/plaintiff is necessary for the disposal of the appeal, he shall consider the same in accordance with the principles set forth above.



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WEB COPY 5. With the above direction, the civil revision petition is allowed and the order in I.A.No.4 of 2023 in AS.No.5 of 2023 on the file of the learned Principal Subordinate Judge, Tiruppur is set aside and the matter is remitted to the learned Principal Subordinate Judge, Tiruppur to deal with the said application, in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2024

Index:Yes/No

Internet:Yes/No

Speaking order/Non-speaking orders

To

1.The Principal Sub Judge
Tiruppur.

2.The Section Officer
VR Section, High Court, Madras.



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V.LAKSHMINARAYANAN,J.

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