



C.R.P.(MD)No.725 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.725 of 2021

and

C.M.P.(MD)No.3932 of 2021

1.E.Andiappan

2.A.Vela

3.E.Parvathy

4.I.Gomthy

... Petitioners/Respondents/Respondents

Vs.

1.B.Nagarajan

... 1st Respondent/Petitioner/Appellant

2.M.Somasundarai

3.Executive Officer,
Aathoor Town Panchayat,
Aathoor, Tiruchendur Taluk,
Thoothukudi District.

4.Tahsildar,
Taluk Office,
Tiruchendur,
Thoothukudi District.

... Respondents 2 to 4/Respondents/Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 04.02.2020 made in I.A.No.267 of 2017 in A.S.No.435 of 2017 on the file of



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Sub Court, Tiruchendur and set aside the same as illegal by allowing this Civil Revision Petition.

For Petitioners : Mr.G.Rajaraman

For Respondents : Mr.R.J.Karthik for R1

* * *

ORDER

Heard both sides.

2.The defendants in the suit are the revision petitioners. The suit is for declaration and recovery of possession. The suit was dismissed by the trial Court. Aggrieved by the same, the plaintiff filed A.S.No.435 of 2017 before the Sub Court, Tiruchendur In the appeal, I.A.No.267 of 2017 was filed under Order XLI Rule 27 of Civil Procedure Code for adducing additional evidence. The said I.A. was allowed. Questioning the same, this civil revision came to be filed.

3.The learned counsel for the revision petitioners pointed out that the usual practice is to take up an I.A. filed under Order XLI Rule 27 of Civil Procedure Code only along with the final hearing of the appeal. It is pointed out that in this case, such a procedure was not adopted.



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4.The learned counsel for the plaintiff, on the other hand, contended that if the IA is allowed along with the appeal, the respondents would lose the valuable right of cross examination and leading evidence in rebuttal. He relied on the decision reported in *[(2018) 4 SCC 659 (Akhilesh Singh @ Akhileshwar Singh Vs. Lal Babu Singh)]*. According to him, the first appellate Court cannot be faulted for having disposed of IA.No.267 of 2017 before taking up AS.No.435 of 2017 for final disposal. He called upon this Court to dismiss the civil revision petition.

5.I carefully considered the rival contentions and went through the materials on record. Any party to an appeal is at liberty to file an application for adducing additional evidence under Order XLI Rule 27 of Civil Procedure Code. The Hon'ble Supreme Court in *Union of India Vs Ibrahim Uddin (2012 8 SCC 148)* held that an application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and all the evidence sought to be adduced have any relevance / bearing on the issues involved. The Madras High Court in C.R.P(NPD)No. 2979 of 2016 (Rajathi Ammal & Others Vs Venkatasubbu Reddiar & Others) held that even before hearing the appeal the Court cannot independently hear the application for filing additional documents. Such a view has been holding



the field for several decades. [(1994) 2 MLJ 501 (Mad) (Marayee v. Raju)].

The question that calls for consideration is whether in **Akhilesh Singh @ Akhileshwar Singh Vs. Lal Babu Singh (2018) 4 SCC 659**, a contra note has been struck. The answer is in the negative. All that was laid down in **Akhilesh Singh** was that when documents are taken in additional evidence, an opportunity ought to have been given to the other party to lead evidence in rebuttal. In other words, the appeal cannot be decided simultaneously even while admitting additional evidence on record.

6.The legal position can be summed up as follows:

- a) The IA filed under Order 41 Rule 27 of CPC must be considered only when the appeal itself is taken up for final disposal.
- b) If the appellate Court comes to the conclusion that reception of additional evidence is not necessary for disposal of the appeal, then the I.A. will stand dismissed. The IA will be dismissed on the day of disposal of the appeal.
- c) If the appellate Court is of the view that reception of additional evidence is necessary for properly disposing the appeal, then it has to allow the I.A. and give opportunity to the other side to adduce rebuttal evidence or to cross examine the witnesses in question, and only thereafter take up the appeal for disposal.



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7.In this case, the I.A. was taken up independently well before the main appeal was taken up for disposal. This is incorrect and contrary to the settled procedure.

8.In this view of the matter, the impugned order is set aside and the matter is remitted to the file of the first appellate Court. The first appellate Court shall take up I.A.No.267 of 2017 while taking up A.S.No.435 of 2017 for final disposal.

9.The civil revision petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

04.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ias/MGA

Note: Issue order copy on 20.12.2024.

To:

The Sub Court,
Tiruchendur.



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G.R.SWAMINATHAN, J.

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