



C.R.P.(MD)No.1822 of 2019

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DATED: 19.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1822 of 2019

and

C.M.P(MD)No.9406 of 2019

Pandiyaraj

... Petitioner/1st Respondent/
1st Respondent

Vs.

1. Sankar

... 1st Respondent/Petitioner/
Appellant

2. Meenammal

... 2nd Respondent/2nd Respondent
2nd Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 30.07.2019 passed in I.A.No.1 of 2019 in A.S.No.38 of 2018 on the file of the I Additional District Court, Thoothukudi.

For Petitioner : M/s.Vijayakumari Natarajan
Senior Counsel

For Respondents : Mr.Ragavan Gopalan
for Mr.G.Mohan Kumar, for R1.

: Mr.Vijayniwas, for R2.



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2019 in A.S.No.38 of 2018 in dated 30.07.2019 on the file of the I Additional District Court, Thoothukudi.

2. The revision petitioner has filed a suit in O.S.No.3 of 2011 before the I Additional District Court, Thoothukudi for partition and after full trial, judgment and decree came to be passed on 03.06.2015. Aggrieved by the said judgment and decree, the first defendant has preferred an appeal in A.S.No.38 of 2018 and the same is pending. In A.S.No.38 of 2018, the first defendant has filed an Interlocutory Application in I.A.No.1 of 2019 under Order 41 Rule 27 of C.P.C., seeking permission to mark the documents. The revision petitioner herein has filed the counter statement. The learned Appellate Judge, after enquiry, has passed the impugned order allowing the application in I.A.No.1 of 2019 on 30.07.2019. Aggrieved by the impugned order, the present revision came to be filed.



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3. Recently, I had an occasion to consider the scope of Order 41 Rule 27 C.P.C., in the case of **Sevaraj Vs. V.K.Parasuram (died) and others** reported in **2023-4-L.W., 887** and the relevant passages are extracted hereunder:

“17. Under Rule 27 of Order XLI C.P.C., production of additional evidence where oral or documentary is permitted only under three circumstances which are;

-Where (i) the trial Court had refused to admit the evidence, though it ought to have been admitted; (ii) the evidence was not available to the party, despite exercise of due diligence and (iii) the appellate Court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.

18. It is settled law that additional evidence in appellate Court cannot be produced by a party as of right and that the essentials of Order 41 Rule 27 C.P.C., have to be satisfied. It is pertinent to note that the said provision cannot be used to patch up the weak points in the case and fill up the omission in the Court of appeal.

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21. No doubt, Hon'ble Supreme Court in catena of decisions, has settled the legal position that when an application for reception of additional evidence under Order 41 Rule 27 C.P.C., is filed in an Appeal, the Appellate Court has to consider the application along with the appeal and deprecated the practice of considering the application for reception of additional evidence separately. No doubt, the Hon'ble Division Bench of this Court has referred to the judgment of Hon'ble Supreme Court in **Arjun Singh Vs. Kartar Singh** reported in **AIR 1951 SC 193**, wherein our Apex Court after referring to the decision of the Privy Council, has held that without examination of the evidence on record and without a decision is reached that the evidence as it stood disclosed a lacuna which the Court required to be filled up for pronouncing its judgment, the appellate Court would not be justified in admitting additional evidence under Order 41 Rule 27 C.P.C.

22. The learned Senior Counsel for the respondents would submit that the above observations of the Hon'ble Supreme Court would only mean that the Court has to consider the evidence already available on record for deciding the appeal and if any other evidence is required for the Court to pronounce the judgment, then only the concerned Appellate Court can hear the petition for reception of



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additional evidence and decide whether the additional evidence sought to be received are required for pronouncing the judgment. If such an interpretation is given to the said observation, the Appellate Court without conducting any enquiry in the application for the reception of additional evidence and without even knowing the reason for filing the petition for reception of additional evidence, has to reject the same, if the Court comes to a decision that the evidence already available is sufficient enough to decide the appeal.

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26. It is settled law that the application filed under Order 41 Rule 27 C.P.C., should be heard along with the appeal, but that does not mean that the judgment in the appeal and the order in the application filed under Order 41 Rule 27 C.P.C., should be pronounced simultaneously. The hearing of the appeal along with the application for reception of additional evidence is mandatory, but not the disposal. In case, if the appellate Court comes to a decision that the additional evidence sought to be received is to be allowed, then the next question that arises is as to whether the appellate Court itself shall record the evidence or the trial Court or any other Court should be directed to record the evidence and transmit the same. But if the appellate Court comes to a decision that the application for reception of additional evidence is liable to be rejected, then there is no bar or prohibition for the appellate Court to pronounce the



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judgment in the appeal along with the dismissal order of the petition filed under Order 41 Rule 27 C.P.C., and in that case, the appellate Court has to pass a common judgment and order. But in case, if the appellate Court comes to a decision that the additional evidence sought to be received is to be allowed, then the appellate Court by re-opening the appeal has to pass orders only in the application. In case of the appellate Court allowing the application filed under Order 41 Rule 27 C.P.C., if the respondent in the petition for reception of additional evidence stated no objections for marking the documents or if the Court comes to a decision that there is no issue with regard to the admissibility of the document and the objections raised by the other side are formal, the appellate Court by itself can mark the documents and proceed to pronounce the judgment. If the respondent raises serious objections for marking the documents and there exists an issue with regard to the very admissibility of the document itself, then the appellate Court has to call the applicant to adduce further evidence either before the appellate Court or before any other Court as directed by the appellate Court and in that case, the other side is entitled to produce the rebuttal evidence in accordance with the provisions of the Evidence Act.”



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4. Considering the settled legal position, the course adopted by the learned appellate Judge in deciding the application under Order 41 Rule 27 C.P.C., separately cannot be appreciated. The learned appellate Judge should have taken the appeal along with the above petition for reception of additional evidence and in case if the Court is of the view that the additional evidence is not necessary or cannot be received, has to pronounce the judgment in the appeal by dismissing the petition under Order 41 Rule 27 C.P.C., but on the other hand, if the Court is of the view that the additional evidence is necessary, then the Court has to adopt any of the course referred in the above judgment. The appellate Court, by considering the nature of the documents sought to be received and by observing that the appellant should be given an opportunity, has allowed the prayer for reception of additional evidence. Hence, this Court concludes that the impugned order allowing the petition cannot be sustained legally and as such, the same is liable to be set aside and is set aside accordingly.



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5. In the result, the Civil Revision Petition is allowed, by setting aside the order passed in I.A.No.1 of 2019 in A.S.No.38 of 2018, dated 30.07.2019. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs. The Appellate Court is directed to restore the above petition for reception of additional evidence filed under Order 41 Rule 27 C.P.C., to its file and to hear the appeal along with the above petition and to proceed with the same in accordance with the settled legal position above referred and dispose of the same within a period of two months from the date of receipt of copy of this order.

19.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
das/dss



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To

1. The 1st Additional District Court,
Thoothukudi.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.MURALI SHANKAR,J.

das/dss

Order made in
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and
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