



CRP(MD)Nos.3129 and 3130 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/01/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP(MD)Nos.3129 and 3130 of 2023

and

CMP(MD)Nos.16100 of 2023

(1)CRP(MD)No.3129 of 2023:-

- 1.Sree Shanmuga Seva Sangam,
Rep. By its Present Secretary,
D.Nagarajan.
- 2.Sree Shanmuga Seva Sangam Nattar Trust,
Rep. By its Secretary,
M.Sethilvadivel : Petitioners/Petitioners/
Respondents 2 and 3

Vs.

G.Venkatachalapathy,
Secretary Sadhu Dharmanandha Saraswathi
Swamingal Trust,
514, North Gree Veethi,
Palani Adivaram,
Palani.
Residing at Door No.14/89, Sampantham Veedhi,
R.S.Puram, Coimbatore District.

(Amended the cause title,
as per the order of this court,
dated 19/01/2024 made in
CMP(MD)No.440 of 2014 in
CRP(MD)No.3129 of 2023) : Respondent/Respondent/
Appellant

PRAYER:- Civil Revision Petition has been filed
under Article 227 of the Constitution of India, to call
for the records pertaining to IA No.29 of 2023 in AS No.
33 of 2023 on the file of the Additional District Judge,



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Palani and direct the Additional District Judge, Palani to follow the procedures contemplated under Order 41 Rule 27 & 28 CPC before passing the judgment in AS No.33 of 2023 on the file of the Additional District Judge, Palani.

(2)CRP(MD)No.3130 of 2023:-

- 1.Sree Shanmuga Seva Sangam,
Rep. By its Present Secretary,
D.Nagarajan.
- 2.Sree Shanmuga Seva Sangam Nattar Trust,
Rep. By its Secretary,
M.Sethilvadivel : Petitioners/Petitioners/
Respondents 2 and 3

Vs.

G.Venkatachalapathy,
Secretary Sadhu Dharmanandha Saraswathi
Swamingal Trust,
514, North Gree Veethi,
Palani Adivaram,
Palani.
Residing at Door No.14/89, Sampantham Veedhi,
R.S.Puram, Coimbatore District.

(Amended the cause title,
as per the order of this court,
dated 19/01/2024 made in
CMP(MD)No.441 of 2014 in
CRP(MD)No.3130 of 2023) : Respondent/Respondent/
Appellant

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to IA No.30 of 2023 in AS No. 33 of 2023 on the file of the Additional District Judge, Palani and direct the Additional District Judge, Palani to follow the procedures contemplated under Order 41 Rule 27 & 28 CPC before passing the judgment in AS No.33 of 2023 on the file of the Additional District Judge, Palani.



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For Petitioners (in both cases)	: Mr.M.Vallinayagam Senior Counsel for Mr.J.Anandkumar
For Respondents (in both cases)	: Mr.Veera Kathiravan Senior Counsel for Mr.S.Ramsundar Vijayaraj

COMMON ORDER

These civil revision petitions have been filed against the orders passed in IA Nos.29 and 30 of 2023 in AS No.33 of 2023 on the file of the Additional District Judge, Palani and consequently to direct the Additional District Judge, Palani to follow the procedure contemplated under Order 41 Rules 27 & 28 CPC before passing judgment in AS No.33 of 2023 on its file.

2.The facts in brief:-

A suit in O.S No.310 of 2023 was filed by Sadhu Dharmanandha Saraswathi Swamigal Trust, the respondent herein through its Secretary against Sree Shanmuga Seva Sangam through its Secretary D.Nagarajan and Sree Shanmuga Seva Sangam Nattar Trust, through its Secretary, for permanent injunction and for costs.

(ii)After elaborate trial process, the suit was dismissed by the trial court by judgment, dated 22/02/2023. Against which, appeal was preferred in AS



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No.33 of 2023 by the plaintiff namely the respondent herein before the Additional District Judge, Palani.

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(iii)A cross appeal was also preferred by the petitioners herein. It is also pending. The petitioners were able to secure some documents. So they requested time to produce those documents. But however, the Appellate Court without responding to the request, heard the arguments and posted the case for judgment. Only thereafter, the petitioners could be able to secure the certified copies of the documents. So he filed IA Nos.29 and 30 of 2023 to reopen the case and to receive the additional documents as evidence. The respondent herein made endorsement as 'No Objection' in the petitions. So both applications were allowed by the Appellate Court. But without giving any opportunity to prove the documents and file chief affidavit, the Appellate Court posted the case for pronouncing judgment.

3.Aggrieved over the same, these revisions are preferred.

4.At the time of admission, the learned Counsel appearing for the petitioners has submitted that proper procedure set out under Order 41 and Rules 27 & 28 CPC is



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not properly followed by the Appellate Court. Finding that there is a violation of the procedure, interim stay was granted by this court, on 28/11/2023.

5.Now when the matter is called today, the learned Senior Counsel appearing for the petitioners seeks time to argue the matter. But the learned Senior Counsel appearing for the respondent would submit that in-fact that they have no objection to reopen and to produce the additional documents as evidence, the petitioners cannot have any grievance over the procedure adopted by the Appellate Court.

6.But when the violation of the procedure was pointed by this court to the learned Senior Counsel appearing for the respondent, he would submit that he has no objection to reopen the argument and rehearing the appeal in the light of the documents produced by the petitioners. So even though time is sought for by the learned counsel on record for the petitioners to argue the matter, in view of the submission made by the learned Senior Counsel appearing for the respondent, the matter can be disposed of with certain directions to the Appellate Court.



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7.The Appellate Court did not properly appreciate the difference between the permission to produce the additional documents and proof of the documents, simply because the additional documents are permitted to be produced it will not partake the character of proof.

8.Here the respondent has also no objection to receive the documents. But whether, that no objection can be taken to mark the documents as evidence or not is not clear on record.

9.Now whatever it may be, when the additional documents are proposed to be marked, opportunity must be given to both sides to advance their arguments in the light of the additional documents also. So I am not touching upon the issue as to whether the petition filed under Order 41 Rules 27 & 28 CPC can be disposed of independently without hearing the main appeal. But here, it appears that the main appeal itself was heard and reserved for judgment. Only at that time, additional documents were sought to be produced. The mode of proof is the only point to be taken up by the Appellate Court.



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10. So both the civil revisions are **disposed of** directing the Appellate Court namely the Additional District Judge, Palani to rehear the appeal in AS No.33 of 2023 in the light of the additional documents produced. At the time rehearing the appeal, the Appellate Court may also decide as to the mode of proof of the additional documents as indicated above and dispose of the appeal as per law, as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

19/01/2024

Index:Yes/No
Internet:Yes/No
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To,

The Additional District Judge,
Palani.



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G.ILANGOVAN, J

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