



CMP NO.13152 OF 2025 IN A.S.NO.292 OF 2017

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMP NO.13152 OF 2025
IN
APPEAL SUIT NO.292 OF 2017

Muniammal (Died)

1.Madhammal

D/o.Andi Gounder

2.Sivan

S/o.Andi Gounder

... Petitioners / Appellants /
Plaintiffs

Vs.

1.Thiruppathiammal

W/o.Shanmugam

2.Perumal

S/o.Shanmugam

3.Thangavel

S/o.Shanmugam

4.Appadurai

S/o.Shanmugam

5.Murugammal

D/o.Shanmugam

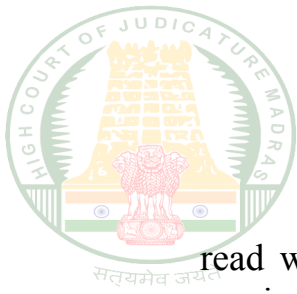
6.Deivanai

D/o.Shanmugam

... Respondents / Respondents /
Defendants

PRAYER: Civil Miscellaneous Petition filed under Order XLI Rule 27

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read with Section 151 of the Code of Civil Procedure, 1908 praying to receive the documents detailed hereunder as additional evidence on the side of the petitioners.

List of Documents:

1) Certified copy of Sale Deed dated May 26, 1975 executed by Govindan in favour of Umaiyan @ Andi.

2) Certified copy of Sale Deed dated September 6, 1977 executed by Kannan in favour of Umaiyan @ Andi.

3) Copy of A Register before UDR issued by District Collector on May 30, 2017

4) Copy of UDR A Register

For Petitioners : Mr.J.Titus Enock
for M/s.I.C.Vasudevan

For Respondents : Mr.C.Munusamy

ORDER

Mr.J.Titus Enock, learned Counsel on record for the petitioners / appellants / plaintiffs appears before this Court physically.



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2. Mr.C.Munusamy, learned Counsel on record for the respondents / respondents / defendants appears before this Court through Video Conferencing Mode.

3. The petitioners herein are the appellants in A.S.No.292 of 2017.The petitioners filed a Suit for partition seeking division of the Suit Properties into two equal shares and allotment of one such share to the petitioners. The Suit Properties consists of fourteen items totally.

4. The case of the petitioners / plaintiffs is that some of the Suit Properties are ancestral and joint family properties and the rest are purchased in and out of joint exertions and joint family income.

5. After full-fledged trial, the Trial Court decreed the Suit *qua* Suit Item Nos.1 and 2 by holding that they are agricultural lands belonging to Mottaiyan, who is the father of the first plaintiff and first defendant and upon his demise, the first plaintiff and first defendant would be entitled to equal share in them as per Section 8 of the Hindu Succession Act, 1956. *Qua* Suit Item No.3, the Trial Court held that it is the third plaintiffs' property purchased in the name of third plaintiff. *Qua* Suit Item No.4 to 14, the Trial Court held that these properties are separate properties of first



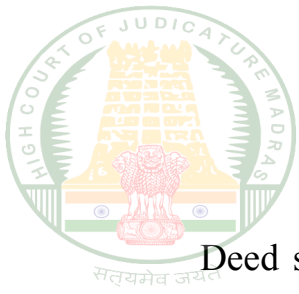
defendant's husband. Accordingly, the Trial Court dismissed the Suit *qua* Suit Item Nos.3, 4 to 14.

6. Feeling aggrieved, the petitioners / plaintiffs have preferred the main Appeal Suit. During the pendency of the main Appeal Suit, the petitioners / plaintiffs filed the present petition under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ['CPC' for short] praying to receive additional documents.

7. This Court has heard out the main Appeal Suit along with this petition under Order XLI Rule 27 of CPC. Both sides arguments heard extensively. Perused the entire evidence available on record.

8. The defendants marked Ex-B.1 to Ex-B.19 documents, among which Exs-B.1 to B.5 are Sale Deeds, and Exs-B.6 to B.19 are predominantly revenue records but contains some other documents as well. Ex-B.1 – Sale Deed relates to Suit Item Nos.4 and 5 and stands in the name of first defendant's husband.

9. Ex-B.2 – Sale Deed stands in the name of first defendant's husband in respect of half share in Suit Item Nos.10 to 12. Ex-B.3 – Sale



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Deed stands in the name of first defendant's husband in respect of Suit Item No.14. Ex-B.4 and Ex-B.5 – Sale Deeds relate to Survey No.172/4 and 172/9 and whether it relates to any of the Suit Properties or not, is a question to be decided in the main appeal.

10. This Court has perused the affidavit filed in support of the present petition, wherein it is stated that the documents sought to be received were handed over to the Trial Court advocate who due to inadvertence omitted to file the same into the Court. The petitioners are not literates and had no knowledge of whether the documents were filed into the Trial Court or not. Some of the Suit Properties stand in the name of first petitioner / first plaintiff's husband and hence, the documents sought to be received are vital to the plaintiffs' case.

11. This Court has perused the list of documents sought to be marked. The Document Nos.1 and 2 are certified copies of the Sale Deeds dated May 26, 1975 and September 6, 1977 respectively, standing in the name of Oomaiyan alias Aandi who is said to be first plaintiff's husband. Document Nos.3 and 4 are revenue records obtained by the third plaintiff from Public Information Officer under the Right to Information Act, 2005.



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12. Document No.1 was obtained on June 5, 2014 *i.e.*, during of the pendency of the Original Suit, before the Judgment. The Trial Court pronounced Judgment on February 24, 2017. Document No. 2 was obtained on July 19, 2019. Document Nos.3 and 4 (revenue records) were obtained on May 30, 2017. Thus, it is clear that except Document No.1, the other three documents were obtained after the Judgment.

13. Document No.1 relates to Survey Nos. 144/3 (Suit Item No.2) and 144/4. Document No.2 relates to Suit Item No.13. Document Nos.3 and 4 relate to various items of the Suit Properties.

14. Document Nos.1 and 2 are Sale Deeds registered before the Suit, that is to say, they are pre-Suit documents, and Document Nos.3 and 4 are public documents. Hence, this Court is of the view that the aforesaid documents sought to be received as additional evidence under Order XLI Rule 27 of CPC are necessary to decide the dispute between the parties effectively. Hence, this Court is inclined to allow this petition.

Accordingly, this Civil Miscellaneous Petition is allowed.



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15. This Court directs the Trial Court to take additional evidence as per Order XLI Rule 28 of CPC. **Both parties are directed to appear before the Trial Court on August 12, 2025.** The Trial Court shall recall P.W.1 without insisting any formal petition from the petitioners, take additional evidence and mark the petition mentioned documents as additional evidence. Needless to mention that the defendants are entitled to cross-examine P.W.1 on the same day or any other day appointed by the Trial Court without fail.

16. Further, the defendants filed Ex-B.2 which relates to half share in Suit Item Nos.10 to 12. There is no document except revenue records adduced by either side in respect of the remaining half share therein. In the interest of justice, to avoid multiplicity of proceedings and to ensure speedy disposal, this Court grants liberty to both parties to adduce any pre-Suit registered document(s) / Deed(s) as additional evidence in respect of any of the Suit Properties by recalling the witnesses.

17. This entire exercise shall be concluded by the Trial Court before August 20, 2025. **The additional evidence (depositions) so recorded shall be sent along with the marked documents to this Court**



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as early as possible, not later than August 25, 2025. Both parties are directed to co-operate with the Trial Court for recording the additional evidence expeditiously.

18. Registry shall despatch C.M.P. No.13152 of 2025 in A.S.No.292 of 2017 along with the petition mentioned documents to the Trial Court on or before August 3, 2025 so as to enable the Trial Court to take additional evidence as per this Order.

19. List the matter before this Court on August 26, 2025.

01.08.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Note : Issue Order copy by today (01.08.2025)
TK



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To

- 1.The Principal District Court
Dharmapuri.
- 2.The Principal District and Sessions Judge
Dharmapuri.
(for recording additional evidence as per this Order)
- 3.The Sub Assistant Registrar / Correspondence Seat
Judicial Section
Madras High Court
Madras.



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R. SAKTHIVEL, J.

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