



CRP No.3327 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13-08-2025**

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No.3327 of 2023 and CMP No.20621 of 2023

R.Subbiah

... Petitioner

Vs

1.N.Mallika

2.Pramila Grover

3.Miss.Anuradha Grover

4.Ravi Grover

Respondents

Revision filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 25.07.2023 in I.A.No.2 of 2021 in A.S.No.19 of 2019 pending on the file of II Additional District and Sessions Court, Thiruvallur at Poonamallee.

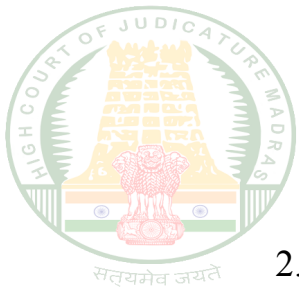
For Petitioner : Mr.K.J.Parthasarathy

For Mr.G.Vijayakumar

For Respondents:Mr.A.Vijayakannan

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.



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2. The first appellate Court has entertained an application in I.A.No.2 of 2021 filed under Order 41 Rule 27 of Civil Procedure Code on payment of costs. Aggrieved by the said order, the first respondent in A.S.No.19 of 2019 has come up by way of revision.

3. The learned counsel for the petitioner states that the first appellate Court has erred in allowing the application instead of deciding the application along with the main appeal. Learned counsel would rely on the decision of the Hon'ble Supreme Court in *A.Andisamy Chettiar vs A.Subburaj Chettiar* reported in **2016(1) CTC 362** in this regard. Learned counsel would therefore state that the first appellate Court has to necessarily decide the requirement of the additional documents only at the time of considering the appeal suit on merits, i.e., at the time of disposal of the same. The exercise of taking up the interlocutory application independently is under challenge in the present revision, being not in accordance with the position of law, settled by the Hon'ble Supreme Court.

4. Per contra, learned counsel for the respondents would contend that subsequent to the first appellate court allowing the application, on payment of costs, the costs has also been tendered and received by the revision petitioner

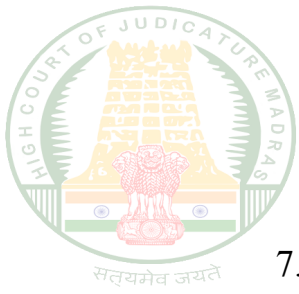


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and thereafter, the same has been returned. He further states that the first appellate court has clearly protected the interest of the respondents stating that no prejudice would be caused and they have the right to cross examine the witnesses on the documents that are now sought to be introduced by way of additional evidence.

5. I have carefully considered the admissions made by the leaned counsel on either side.

6. Admittedly, any application under Order 41 Rule 27 of Civil Procedure Code can be entertained only on the grounds that are available and set out in Order 41 and Rule 27 of Civil Procedure Code, subject to the procedure set out in Order 41 Rule 28 of CPC. The Hon'ble Supreme Court as well as this Court have time and again, held that any application to file additional evidence in the appellate stage has to be taken up along with the final disposal of the appeal and not independently. If any special circumstances exist for requiring the said application being heard and disposed of earlier, then, the first appellate court has to necessarily assign reasons, if it is desiring to take up the application independently and not along with the main appeal.



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7. In fact, in the case of *A.Andisamy Chettiar vs A.Subburaj Chettiar* reported in **2016(1) CTC 362**, the Hon'ble Supreme Court has set aside the order allowing an application under Order 41 Rule 27 of Civil Procedure Code and directed the application to be decided afresh in the light of the settled principles that were laid down by the Hon'ble Supreme Court in *Mahavir Singh and others vs Naresh Chandra and another* reported in **2001(1) SCC 309** and *Gurudev Singh and Others vs Mehnga Ram and another* reported in **1997(6) SCC 507**.

8. On going through the order of the first appellate Court, I find that the first appellate Court has not given any reasons for deciding to take up the application for additional evidence independently and deviating from the settled practice of taking up such an application along with the main appeal. The Hon'ble Supreme Court, in similar circumstances, set aside the order in *A.Andisamy Chettiar's* case. However, the Hon'ble Supreme Court in order to do complete justice between the parties, directed the first appellate court to decide the application for additional evidence afresh in the light of the observations made by the Hon'ble Supreme Court, reiterating the principles on which an application can be allowed or rejected. In the present case as well, considering that the first appellate court has erred in taking up the



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application for filing additional evidence independent of the main appeal, I am constrained to set aside the order passed by the II Additional District and Sessions Court, Tiruvallur at Poonamallee. However, the first appellate Court is at liberty to take I.A.No.2 of 2021 along with the final disposal of A.S.No.19 of 2019 and if the first appellate court is of the considered opinion that the additional evidence which is sought to be produced would be necessary for deciding the appeal suit, then it shall be open to the first appellate Court to receive the additional documents at that juncture and dispose of the application along with main appeal suit, accordingly.

9. Considering that the appeal suit is pending from the year 2019, The II Additional District and Sessions Court, Tiruvallur at Poonamallee is directed to dispose of the appeal suit in A.S.No.19 of 2019 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

13.08.2025

Index: Yes/No
Website:yes/no
Speaking Order/Non-speaking Order
sr



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P.B.BALAJI,,J

sr

To

II Additional District and Sessions Court, Thiruvallur at Poonamallee.

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