

CRP(MD). No.1223 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23/07/2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). Nos.1223 and 1224 of 2022
and CMP(MD) No.5023 of 2022**

Thirumalaiammal

... Petitioner in
both petitions

Vs

Muthaiya Karaiyalar

... Respondent in
both petitions

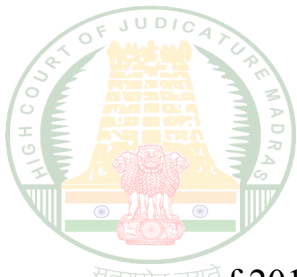
COMMON PRAYER :-Civil Revision Petitions filed under Article 227 of The Constitution of India to set aside the fair and decreetal order dated 12.04.2022 passed in I.A.Nos. 2 and 3 of 2019 in A.S. No. 93 of 2019 on the file of the Principal Sub Court, Tenkasi.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondent : Mr.P.Thiyagarajan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 12.04.2022 passed in I.A.Nos. 2 and 3 of 2019 in A.S. No. 93



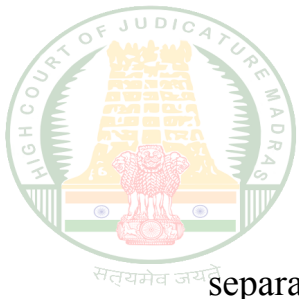
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of 2019 on the file of the Principal Sub Court, Tenkasi.

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2. The petitioner is the plaintiff in OS No.539/2012 on the file of the Principal District Munsif Court, Tenkasi. The said suit is filed for declaration and injunction and the suit was also decreed in favour of the petitioner against which, the respondent/defendant filed an appeal before the lower appellate Court in AS No.93/2019. In the said appeal, the respondent herein filed two interlocutory applications in IA Nos.2 and 3 of 2019 for receiving the additional evidence under Order XLI Rule 27 of the Code of Civil Procedure and also to receive the stamp duty as ordered by this Court in CRP(MD) No.686/2016. Both the petitions came to be allowed. Challenging both the orders, the petitioner is before this Court with these Civil Revision Petitions.

3. The learned counsel for the petitioner would submit that as per Order XLI Rule 27 of the Code of Civil Procedure, after receiving the additional evidence and documents, at the stage of appeal, the applications for receiving additional evidence need not be heard

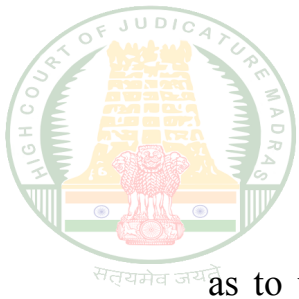


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separately and both the applications for additional evidence and document can be heard along with the appeal and disposed of. The learned counsel would submit contrary to the provisions, in the present case, both the interlocutory applications were independently decided without hearing the appeal and hence, the order is not sustainable. However, the learned counsel would submit that it is suffice if a direction is issued to the lower appellate Court to follow the procedure contemplated under Order 41 Rule 27 of the Code and Order 47 Rule 28 of the Code before deciding the appeal.

4. For the said submission, the learned counsel for the respondent has no serious objection. However, the learned counsel would submit that in respect of receiving additional stamp duty, an order may be passed to pay the additional stamp duty in terms of Section 35 of the Stamp Act and in terms of Section 49 of the Tamil Nadu Registration Act for collateral purposes. He would further submit that in that case, the order in IA No.3/2019 may be set aside and the respondent may be permitted to file a clarification petition before this Court in CRP(MD) No.686/2016,



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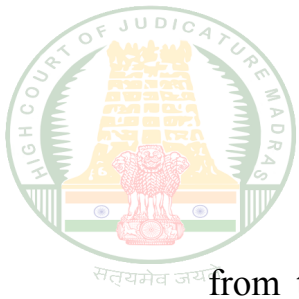
as to whether the stamp duty under Section 35 of the Stamp Act to be paid or not in the appeal stage.

5. I have considered the rival submissions and perused the materials available on record.

6. Considering the submissions made on either side, without advertng to the merits or the contentions raised on either side, the Civil Revision Petitions are disposed of in the following terms:

(i) CRP(MD) No.1223 of 2022 is disposed of with a direction to the trial Court to decide the appeal in accordance with Order XLI Rule 27 and Order XLI Rule 28 of the Code before deciding the appeal;

(ii) For payment of stamp duty in terms of Section 35 of the Stamp Act for collateral purpose under Section 49 of the Tamil Nadu Registration Act, it is for the respondent to pay stamp duty in the suit. However, since the suit is decreed in favour of the petitioner/plaintiff and the judgment and decree of the trial Court is applicable for payment of stamp duty in the appeal stage, unless the respondent gets a clarification



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from this Court with regard to payment in terms of Section 35 of the Stamp Act, the respondent could not proceed with the appeal. Accordingly, the order in IA No.3 of 2019 is set aside and CRP(MD) No. 1224 of 2022 is allowed and liberty is granted to the respondent to file appropriate application before this Court in the manner known to law with regard to payment of stamp duty in terms of Section 35 of the Stamp Act in the appeal stage. However, stamp duty to be paid by the respondent is subject to the outcome of the clarification to be filed before this Court.

No costs. Consequently connected Miscellaneous Petition is closed.

23.07.2025

NCC : Yes/No

Index : Yes/No

RR

TO

1.The Principal Sub Court, Tenkasi.

2.VR Section

Madurai Bench of Madras High Court, Madurai.

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M.DHANDAPANI,J

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**ORDER
IN
CRP (MD). Nos.1223 and 1224 of 2022**

Date : 23/07/2025