

S.A.(MD)No.161 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 10.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.161 of 2018 and
C.M.P.(MD)Nos.4305 and 4306 of 2018

- 1.Manickam (Died)
- 2.Jeyamary
- 3.Roselin Mary Simiyonraj
- 4.Santhi Selvaraj
- 5.Ida Vinnarasi
- 6.Britti Mariya Selvam

... Appellants

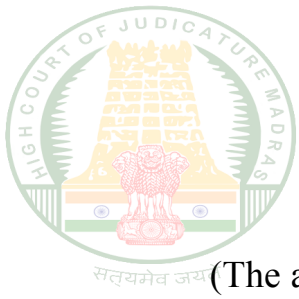
VS

- 1.A.Antony (Died)

Thainesmary (Died)
Kulanthaidhiresh (Died)

- 2.Jeyarani
- 3.Jesurajakumar
- 4.Michaelraj
- 5.Arockiyamary @ Prema
- 6.Sahayamary
- 7.Tanislas
- 8.Michaelraj
- 9.Jeyafathima
- 10.Adaikala Mary
- 11.A.Vijaya Kumar
- 12.A.Marry Malathi
- 13.Savari Daisy

...Respondents



S.A.(MD)No.161 of 2018

(The appellants 3 to 6 were brought on record as legal heirs of the deceased first appellant vide order of this Court, dated 19.07.2024 made in C.M.P. (MD)No.6575 of 2024)

(The respondents 10 to 13 were brought on record Legal heirs of the deceased first respondent vide Court order, dated 19.07.2024 made in C.M.P.(MD)Nos.6571 and 6574 of 2024)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to call for the records relating to the judgment and decree, dated 15.11.2017 made in A.S.No.43 of 2014 on the file of the Subordinate Court, Devakottai reversing the judgment and decree, dated 10.09.2014 made in O.S.No.46 of 2012 on the file of the District Munsif Court, Devakottai and set aside the same.

For Appellants	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.J.Anand Kumar
For R2 to R9	: Mr.G.Prabhu Rajadurai for Mr.A.Muralikumar
For R10 to R13	:No Appearance

JUDGMENT

The defendants are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 15.11.2017, in A.S.No. 43 of 2011 on the file of the Subordinate Court, Devakottai, reversing the judgment and decree, dated 10.09.2014 made in O.S.No.46 of 2012 on the



S.A.(MD)No.161 of 2018

file of the District Munsif Court, Devakottai.

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2.For the sake of convenience, the parties are referred to, as per their litigative status before the trial Court.

3.According to the plaintiffs, the suit property was originally purchased by one Viyagula Udayar and he is the absolute owner, from whom, one Rayar Udayar, who is the grandfather of the plaintiffs, had purchased the suit property on 23.07.1934. Through the sale, a Well has also been conveyed. The suit property measures half kurukkam and the boundaries in the suit property are as per the boundaries in the sale deed. The settlement register also stood in the name of Rayar Udayar. Further, according to the plaintiffs, after the death of the grandfather, Rayar Udayar, his only son Arulandu inherited the suit property and he was in enjoyment of the suit property. Pursuant to the death of Arulandu, the plaintiffs inherited the property and thereafter, the plaintiffs 2 to 5 have executed a document, dated 11.01.2009 relinquishing their shares and rights in favour of the first plaintiff. The patta, which was issued in Patta No.1411 for the suit property, stands in the name of the plaintiffs' father.



S.A.(MD)No.161 of 2018

WEB COPY

4.It is the further case of the plaintiffs that the defendants are residing adjacent to the suit property and the father of the first defendant's name was also Rayar Udaryar. As such, by misusing the name of his father, the first defendant had obtained a patta fraudulently. In view of the patta granted, the first defendant had went ahead and executed a settlement deed in favour of the second defendant and the patta was also mutated. In respect of the patta granted, the plaintiffs have also filed a petition before the Revenue Divisional Officer, Devakottai, for cancellation of the same and in spite of the same, since the defendants are attempting to trespass into the suit property, the plaintiffs have come up with the suit for declaration and permanent injunction.

5.The defendants resisted the suit by filing a written statement disputing the claim of the plaintiffs that the suit property originally purchased on 23.07.1934 by their grandfather Rayar Udayar. It is the specific claim of the defendants that the suit property belongs to the first defendant's father, Rayar Udayar, who was the son of Savarimuthu Udayar. It is the claim of the defendants that there was a partition between



S.A.(MD)No.161 of 2018

Savarimuthu and his brothers, pursuant to which, patta in the UDR came to be issued in favour of the first defendant in respect of the suit property.

Only tracing his right from the ancestral property and also the UDR patta, the first defendant had executed a settlement deed in favour of the second defendant and the revenue records have also been mutated and the patta has also been issued in the name of the second defendant. The petition filed by the plaintiffs to cancel the patta was also rejected on 11.06.2010. According to the defendants, they have filed a separate suit in O.S.No.1 of 2008 against the persons, who attempted to trespass into the suit property and further, the sisters of the second defendant also filed a separate suit in O.S.No.64 of 2010 for partition. In view of these facts, the plaintiffs do not have any right and had sought for dismissal of the suit.

6.During trial, the first plaintiff examined himself as PW-1 and further examined PW-2 to PW-4 and marked Ex-A1 to Ex-A12. On the side of the defendants, the second defendant examined herself as DW-1 and marked Ex-B1 to Ex-B6. An Advocate Commissioner was appointed and the report and plan filed by the Advocate Commissioner were marked as Ex-C1 and Ex-C2.



S.A.(MD)No.161 of 2018

WEB COPY

7.The trial Court, after analysing the oral and documentary evidences, came to the conclusion that the first plaintiff is not entitled for the suit relief and thereby, dismissed the suit. In the appeal, the plaintiffs choose to file a petition under Order XLI Rule 27 CPC to receive additional documents. The lower appellate Court on coming to the conclusion that the additional documents filed by the plaintiffs are to be allowed, had received those documents and marked as Ex-A13 to Ex-A18 and had, by placing reliance on those documents, particularly, Ex-A17 and Ex-A18, allowed the appeal holding that the first plaintiff is entitled to the suit relief, since he has established his title and right over the suit property through those two documents. Assailing the judgment and decree of the lower appellate Court in reversing the judgment and decree of the trial Court, the defendants have preferred the above Second Appeal.

8.This Court by order, dated 04.06.2018, admitted the Second Appeal on the following substantial questions of law:

“(1).Whether the 1st Appellate Court is right in granting the decree based on the additional documents received without following the procedures contemplated under Order 41, Rule 27 CPC?

(2)Whether the 1st Appellate Court is right in shifting the burden of proof to the appellants in the absence of initial discharge



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S.A.(MD)No.161 of 2018

of burden of proof as required under Section 101 of the Indian Evidence Act?

(3) Whether the 1st Appellate Court is right in holding that it is sufficient to prove three boundaries without proving all the four boundaries to prove the suit property?

(4). Whether the 1st Appellate Court is right in decreeing the suit when the respondents/plaintiffs did not satisfy the principle of boundaries will prevail over the extent and survey number?

(5) Whether the 1st Appellate Court is right in decreeing the suit when admittedly the respondents/plaintiffs claimed the suit property under the unregistered family arrangement as against the provision under Section 17(1) of the Indian Registration Act?

(6). Whether the 1st Appellate Court is right in reversing the well-considered judgment of the trial court without any legal basis?"

9.Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing for the appellants argued that if the first substantial question of law is answered in favour of the appellants, then there is no occasion for this Court to adjudicate the other substantial questions of law, as the matter has to be remanded back. The learned Senior Counsel argued that the entire decision of the lower appellate Court has been made by placing reliance on the additional documents received in Ex-A13 to Ex-A18, and particularly, when the first plaintiff places his right from the documents in Ex-A17 and Ex-A18, the lower appellate Court erred in not following the procedures, as contemplated under Order 41 Rules 27 and 28 of CPC and had simply



S.A.(MD)No.161 of 2018

received and marked the documents without affording an opportunity to the defendants to cross examine the parties, who produced the documents.

10.The learned Senior Counsel also submitted that if the lower appellate Court comes to the conclusion that the documents could be received in evidence, then the corollary would be to remand the matter to the trial Court or to take evidence by the lower appellate Court itself and mark those documents through witness and an opportunity should be afforded to the defendants to cross examine the witnesses and further, the defendants should also be given an opportunity to rebut those documents by filing documents available on their side. However, without resorting to the procedure, the lower appellate Court had simply received the documents and marked as exhibits and had went ahead and allowed the appeal, which is not in consonance with the procedures contemplated under Order XLI Rule 28 CPC and therefore, the decision arrived at by the lower appellate Court is perverse and sought for interference of this Court.

11.*Per contra*, Mr.G.Prabhu Rajadurai, learned Counsel for the respondents 2 to 9 though made submissions on merits, however, conceded

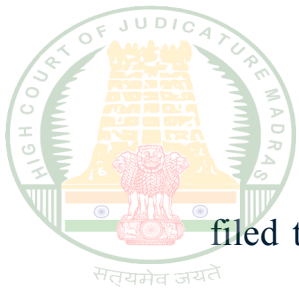


S.A.(MD)No.161 of 2018

that since the procedures, as contemplated under Order XLI Rule 27 CPC, have not been complied with and since the documents in Ex-A13 to Ex-A18 have been received in evidence, the judgment and decree of the lower appellate Court can be set aside and the matter could be remanded back by allowing the parties to let in evidence and mark additional documents.

12.Heard the rival submissions and perused the materials available on records.

13.The suit filed by the plaintiffs seeking for declaration and injunction came to be dismissed by the trial Court. However, in the appeal, the plaintiffs have filed a petition under Order XLI Rule 27 CPC to receive six documents, as additional evidence. It is well settled that the parties are allowed to file additional documents even in the appeal, if the party satisfies that the additional documents are essential and they come within the purview, as contemplated under Order XLI Rule 27 CPC. In an appeal, the appellate Court would take up the application to receive additional documents along with the final hearing of the appeal. During the hearing of the appeal, if the appellate Court comes to the conclusion that the petition



S.A.(MD)No.161 of 2018

filed to receive additional documents does not come within the conditions enunciated under Order XLI Rule 27 CPC. The documents need not be received and the petition could be rejected.

14.However, if the lower appellate Court comes to the conclusion that the petition filed to receive additional documents satisfied the provisions and the documents are required for rendering a decision in the appeal, then the petition could be allowed for receiving the additional documents in evidence, by recording the reasons, as mandated under Order XLI Rule 27(2) CPC. When the appellate Court allows the petition for receiving additional documents, then the procedure contemplated under Order XLI Rule 8 is to be followed. There are two options available. Either the appellate Court can itself record evidence by allowing the party to lead evidence and mark the documents or direct the Court from whose decree the appeal is preferred or any other subordinate Court to take such evidence and to send it when taken to the appellate Court. Order XLI Rules 27 and 28 are extracted hereunder for ease reference:

*“Order XLI-Appeals from original Decrees:
27.Production of additional evidence in Appellate Court.—(1)
The parties to an appeal shall not be entitled to produce additional*



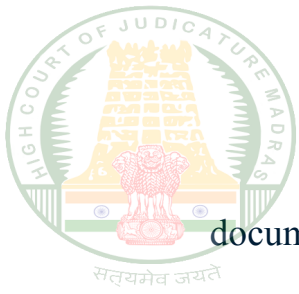
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evidence, whether oral or documentary, in the Appellate Court. But if—

- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.
28.Mode of taking additional evidence-Wherever additional evidence is allowed to be produced, the appellate Court may either take such evidence or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the appellate Court.”

15.As such, in view of the provisions of Order XLI Rules 27 and 28 CPC, when the lower appellate Court allows the petition filed under Order XLI Rule 27 CPC to receive additional evidence, the discretion is available with the appellate Court either to take evidence on its own, wherein, the party is allowed to lead evidence and the documents are marked and in that process, the opposite party gets an opportunity to cross examine the witness and also let in any rebuttal evidence available to controvert the additional



S.A.(MD)No.161 of 2018

documents in the appeal or the appellate Court can send the matter back to the trial Court for the purpose of taking evidence and mark the additional documents, wherein, the parties would get an opportunity to cross examine and let in rebuttal evidence if any, and thereafter, forward the same to the appellate Court to decide the appeal.

16.In the instant case, it could be seen that when the application was filed by the plaintiffs under Order XLI Rule 27 CPC to receive additional documents, the lower appellate Court had considered this application at the time of final hearing of the appeal and the lower appellate Court, on coming to the conclusion that those documents are required and come within the purview of Order 41 Rule 27 CPC, had allowed the petition filed to receive additional documents and had directly marked the documents in the appeal as Ex-A13 to Ex-A18. This procedure adopted by the lower appellate Court directly by receiving the documents and marking it as Ex-A13 to Ex-A18 without taking evidence by itself or sending the matter back to the trial Court for the purpose of recording evidence is not in consonance with the procedures, as contemplated under Order XLI Rule 28 CPC.

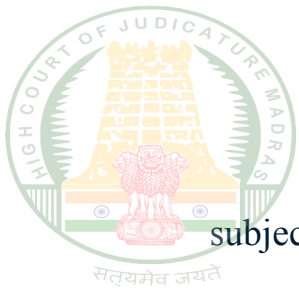


S.A.(MD)No.161 of 2018

WEB COPY

17.The learned Counsel for the respondent 2 to 9 also concedes the position that the documents were received and marked as Ex-A13 to Ex-A18 and evidence has not been recorded either by the lower appellate Court or by sending it before the trial Court and as such the judgment and decree of the lower appellate Court could be set aside and the matter be remanded back to the appellate Court for the purpose of marking those additional documents by complying with the procedure under Order XLI Rule 28 of CPC and thereafter, arrive at a conclusion based on the available materials. In view of such a submission, this Court does not propose to further deal with the other merits or findings rendered by the Courts below.

18.In view of the above finding that the procedure adopted by the lower appellate Court in receiving the documents and marking it as Ex-A13 to Ex-A18 is not consonance with the provisions of Order XLI Rule 28 CPC and in view of the submissions made on either side, the judgment and decree of the lower appellate Court is set aside the matter is remanded back to the lower appellate Court. Since the matter is remanded back, the parties will appear before the lower appellate Court on 20.08.2025. The plaintiffs will be allowed to give evidence and mark those additional documents



S.A.(MD)No.161 of 2018

subject to relevancy and proof. The defendants will also be at liberty to file rebuttal documents, if any and lead evidence in this regard. On such evidence being concluded and based on the additional documents/rebuttal evidence, if any, received and marked, the same would be considered along with other materials and evidences available and a fresh decision would be rendered by the appellate Court.

19. Accordingly, the first substantial question of law is answered in favour of the appellants and against the respondents and in view of the same, other substantial questions of law are returned unanswered.

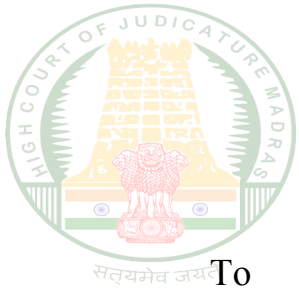
20. In the result, the Second Appeal stands allowed with the above directions. However, there is no order as to costs. Consequently, connected miscellaneous petitions are closed.

10.07.2025

Internet : Yes/No
Index : Yes/No
NCC : Yes/No

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S.A.(MD)No.161 of 2018

To

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1.The Subordinate Judge, Devakottai.

2.The District Munsif, Devakottai.

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.161 of 2018

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.161 of 2018

10.07.2025