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CRP No.5461 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.03.2026

PRONOUNCED ON 01.06.2026

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

CRP No.5461 of 2025

and

CMP No.27471 of 2025

Vijayaraj,
S/o.late Radhakrishnan,
M.Thathampatti Village,
Ettiyampatti Post,
Harur Taluk,
Dharmapuri District.

....Petitioner(s)

Vs

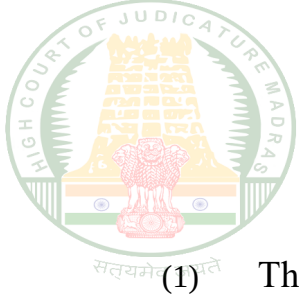
Jeyaraman,
S/o.late Rangasamy,
M.Thathampatti Village,
Ettiyampatti Post,
Harur Taluk,
Dharmapuri District.

... Respondent(s)

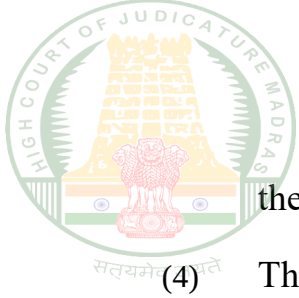
Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal order dated 20.11.2024 made in I.A.No.2 of 2024 in A.S.No.34 of 2018 on the file of the Sub-Court, Harur, Dharmapuri District, and to allow the Civil Revision Petition.

For Petitioner(s) : Mr.C.Prabakaran

For Respondent(s): Mr.Gautam S Raman

**ORDER**

- (1) The Civil Revision Petition is filed against the fair and decretal order dated 20.11.2024 in I.A.No.2 of 2024 in A.S.No.34 of 2018, allowing the respondent's application filed under Order 41 Rule 27 (aa) of the Code of Civil Procedure, to let in additional evidence for examining witnesses in support of the Settlement Deed dated 27.06.1985.
- (2) The parties will be alluded as per their ranking in the Civil Revision Petition.
- (3) The defendant in the suit is the petitioner in the Civil Revision Petition. The suit was filed by the respondent for declaration of his title and for permanent injunction on the basis of the Settlement Deed dated 27.06.1985, executed by his father in his favour. On contest by the petitioner, the Trial Court dismissed the suit, by the judgment and decree dated 18.07.2018. Aggrieved by the judgment and decree of the Trial Court, the petitioner preferred an appeal in AS.No.34/2018, before the Lower Appellate Court.. During the pendency of the appeal, the respondent filed an application in IA.No.2/2024 under Order 41 Rule 27[aa] of CPC, to examine the legal heirs of the attestors of the Settlement Deed dated 27.06.1985, as additional evidence, on the ground that despite due diligence, he was not able to gather



CRP No.5461 of 2025

the particulars of the legal heirs of the deceased attestors.

(4) The petitioner filed a counter to the petition stating *inter alia* that the petition had no merits and the same is filed only to fill up the lacuna in the respondent's case. The petitioner further contended that there is no due diligence on the part of the respondent and that the petition was filed only to drag on the proceedings. The petitioner therefore prayed to dismiss the IA.

(5) The Lower Appellate Court, on consideration of the rival contentions, allowed the application for additional evidence and aggrieved by the said order, the petitioner has filed the above Civil Revision Petition.

(6) The learned counsel for the petitioner reiterated the submissions made before the Lower Appellate Court and further submitted that the reasoning of the Lower Appellate Court that the respondent deserved an opportunity to prove the Settlement Deed by adducing oral evidence before it since it was his final chance, is untenable and against the provisions of Order 41 Rule 27 of CPC. The learned counsel submitted that the respondent, having failed to prove due diligence, the Lower Appellate Court ought to have dismissed the application. The learned counsel therefore prayed that the impugned order deserved to be set aside.

(7) The learned counsel for the respondent, on the other hand, submitted that the



Lower Appellate Court had exercised its discretion on sound reasonings and therefore, no interference was warranted in the impugned order in the Civil Revision Petition.

- (8) Heard both sides and perused the materials placed on record.
- (9) Order 41 Rule 27 of CPC reads as follows:-

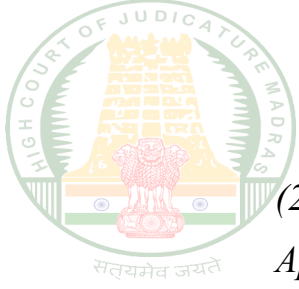
“27. Production of additional evidence in Appellate Court.—

(1) The parties to an Appeal shall not be entitled to produce additional 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]

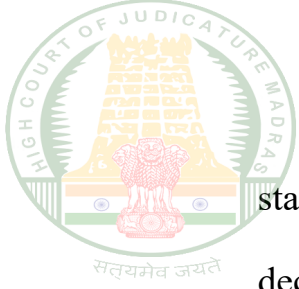
(b) the Appellate Court requires any document to be produced or any Witness to be examined to enable it to pronounce Judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or Witness to be examined.



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(2) *Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.*”

- (10) Upon reading of the above provisions, it is clear that the power to receive additional evidence, whether oral and documentary, is exceptional and circumscribed by the conditions enumerated in Sub-Rules 1[a], 1[aa] and 1[b] of the Rule. The adduction of additional evidence at the appellate stage is not a matter of right, but one circumscribed by the limitation prescribed in the Rule itself.
- (11) The Hon'ble Supreme Court in ***Union of India Vs. Ibrahim Uddin*** reported in **2012 [8] SCC 148**, held that “*general principle is that the Appellate Court should not travel outside the record of the lower Court and cannot taken evidence in appeal. However, as an exemption, Order 41 Rule 27 CPC enable the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist*”.
- (12) In the present case, the application to adduce additional evidence was filed invoking Order 41 Rule 27[aa] of CPC. The said provision enables the party to adduce additional evidence only when due diligence is established. The respondent in his affidavit filed in support of the application, had merely



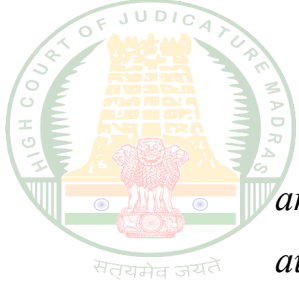
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CRP No.5461 of 2025

stated that he was able to gather the particulars of the legal heirs of the deceased attestors only after the disposal of the suit. In my view, the said pleadings are not sufficient to establish due diligence. It is further pertinent to mention that the Lower Appellate Court has not considered this aspect at all in its order. The reasonings of the Lower Appellate Court in allowing the IA, is to give an opportunity to the respondent to lead evidence, since it was his last chance before it. In my view, the said reasoning is erroneous since it cannot be a criteria for allowing the application. The Lower Appellate Court went to the extent of stating that the burden was on the respondent to establish the validity of the Settlement Deed and therefore, in the interest of justice, an opportunity should be given to the respondent to establish the same by leading additional oral evidence.

- (13) As rightly contended by the learned counsel for the petitioner, the provisions of Order 41 Rule 27 of CPC are not intended to fill up the lacuna or gaps in the evidence. Useful reference in this regard, can be made to the judgment of the Hon'ble Supreme Court in the case of **Kamalam Vs. Ayyasamy**. Reported in **2001 [7] SCC 503**. The Apex Court, in paragraph No.19, held as follows:-

“19.....the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case



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and to fill up the omission in the court of appeal — it does not authorise any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way.....”

- (14) So also the Hon'ble Supreme Court in the case of ***K.R.Mohan Reddy vs. Net Work Inc.*** reported in **(2007) 14 SCC 257** at para 19 held as follows:

“19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court. But mere difficulty is not sufficient to issue such direction.”

- (15) It is therefore clear that the reasoning of the Lower Appellate Court that since the burden is on the respondent to establish the Settlement Deed, in the interest of justice, an opportunity should be afforded to the respondent to lead additional evidence, can only be construed as one giving an opportunity to the respondent to fill up the lacunae in his case.
- (16) At this stage, it would be relevant to refer to a few facts, which will establish that the respondent has not exercised due diligence in adducing evidence before the Courts below. Indisputably, the suit was filed on 30.04.2013 and

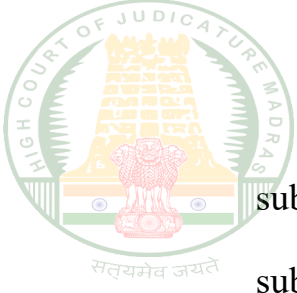


CRP No.5461 of 2025

the suit was dismissed by judgment and decree dated 18.07.2018.

Thereafter, the respondent filed appeal in AS.No.34/2018, and five years later, on 16.11.2023, the respondent filed the petition to receive additional evidence invoking Order 41 Rule 27[aa] of CPC. It is clear that the respondent had almost ten years to adduce evidence. However, the respondent failed to establish what efforts he had taken during the long period of ten years to adduce the additional evidence. Therefore, the contention of the learned counsel for the petitioner that the application lacks *bona fides* and it was filed only to drag on the proceedings, cannot be ignored. Therefore, this Court finds that the impugned order cannot be sustained and the same deserves to be set aside.

- (17) The learned counsel for the respondent, relying on the judgments of the Hon'ble Supreme Court in *A.Andisamy Chettiar Vs. A.Subburaj Chettiar* [2015 [17] SCC 713] and *Sanjay Kumar Singh Vs. State of Jharkhand* [2022 [7] SCC 247], submitted that if the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. The learned counsel further



WEB COPY

CRP No.5461 of 2025

submitted that the additional evidence adduced, if needed for any other substantial cause could be admitted and the Lower Appellate Court has rightly allowed the application.

- (18) This Court has gone through the aforesaid judgments of the Hon'ble Supreme Court and is of the view that the judgments are not applicable to the present case. The application before the Hon'ble Supreme Court arose under the provisions of Order 41 Rule 27 [1][b] of CPC and therefore, the Apex Court held that if the Court requires the additional evidence to be produced or any witness to be examined to enable it to pronounce the judgment, the same could be admitted. In the present case, the petition is filed under Order 41 Rule 27[1][aa] of CPC and therefore, under the provisions of the said Rule, the question of requirement of the Court to admit additional evidence either for pronouncing judgment or for substantial cause, does not arise. Under Order 41 Rule 27[1][aa], the application for production of additional evidence can be filed only by a person who feels that despite exercise of due diligence, he could not produce the evidence before the Court. Since the petition was filed under Clause [aa], the Trial Court erred in admitting the additional evidence without any finding that despite exercise of due diligence, the respondent was not able to produce the



CRP No.5461 of 2025

evidence before the Trial Court.

(19) For all the above reasons, this Court is of the view that the impugned order of the Trial Court is liable to be set aside.

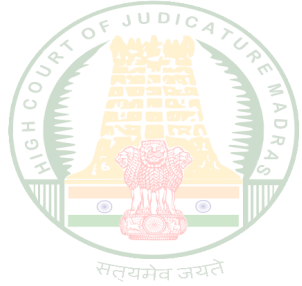
(20) In the result, the Civil Revision Petition is **allowed** and the order dated 20.11.2024, made in IA.No.2/2024 in AS.No.34/2018, is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

01.06.2026

Internet:Yes
Speaking order:Yes
Neutral Citation:Yes
Index : Yes
dsn/AP

To

The Sub Judge, Harur,
Dharmapuri District.



WEB COPY



CRP No.5461 of 2025

N.MALA,J.

Dsn/AP

ORDER
IN CRP No.5461 of 2025

01.06.2026