

ORDER ON I.A.No.5 :

The learned counsel for the Appellant No.4 has filed this application under Order 41 Rule 27 R/w. Section 151 of CPC., seeking production of additional documents to considered the same and permit him to adduce additional evidence.

2. This application is objected by the respondent.

3. Heard and perused the records.

4. The points that arise for my consideration are as follows:

1. Whether the application filed by the Appellant No.4 under Order 41 Rules 27 R/w. Section 151 of CPC., seeking production of list with document as additional documentary evidence, deserved to be allowed?

2. What order?

5. My findings to the above points are as follows:

Point No.1 : Partly in the Affirmative.

Point No.2 : As per final order,

for the following:

: REASONS:**POINT No.1:-**

6. The appellants have filed this appeal challenging the Judgment and decree passed by the trial court in O.S.No.6/2011 which was partly decreed before the trial court. When the case is posted for arguments on merits the Appellant No.4 has filed this application to produce the list with document as additional documentary evidence and also permit him to lead his evidence on the said documents which are very much necessary documents i.e., registered will in respect of their father share property including suit schedule property as suit schedule property was fallen to the share of their father. This fact came to know to them when they cleaned the house and they found that their father was executed the registered will during his life time. The appellants were not able produce the said documents before the lower court to prove their case. Not producing the said document before the trial court is not an intentional but for the above bona fide reasons. The said document is very much necessary to prove their case as the respondents are not having any rights over the suit schedule properties. If the application is not allowed they will put to great hardship and injustice. On the other hand if the application is

allowed no injury and prejudice will cause to the other side. Therefore, he prayed to allow the application.

7. The respondents have filed objection to this application stating that, the application filed by the appellant is not maintainable either under law or on facts. He further submitted that, the document which has been produced by the appellant which has already been record before this court. Based on this document the trial court has disposed the case. The intention of the appellant is just to dragging the proceedings of the case. The documents which the appellant intendeds to produce appears to be not helpful to the court for rendering substantial justice between the parties to the proceedings. Hence, prayed to dismiss the application filed by the appellant.

8. In a decision reported in **HCR 2016 S.C. 806 OF SUPREME COURT OF INDIA HELD IN BETWEEN UNION OF INDIA VS K.V.LAKSHMAN AND OTHERS**, it is held that,

"Addl. Evidence- Court should allow party to file such additional evidence, if party is able to satisfy appellate court that there is justifiable reason for not filing such evidence at trial stage and that addl.

Evidence is relevant and material for deciding rights of parties- Court has to do substantial justice to parties- Merely because court allowed one party to file addl. Evidence in appeal would not by itself mean that Court has also decided entire case in his favour and accepted such evidence- However, one addl. Evidence is allowed to be taken on record, appellate court is under obligation to give opportunity to other side to file addl. Evidence by way of rebuttal”.

9. On perusal of entire records it appears that, plaintiff filed the suit for partition and separate possession of suit schedule property alleged to be the joint family property. The suit of the plaintiff ended in decreeing in part. Being aggrieved by the judgment and decree the plaintiffs and the defendants filed this appeal and cross objections. Now, the appellant intends to produce the judgment and decree of OS No.49/1989. But, it is rightly contended that, learned counsel for the respondent that, the plaint, written statement and judgment and decree of OS No.49/1989 is already on record as Ex.D1 to D3. Therefore, receiving this documents as additional documents not required. Further the demand register extract intended to be

produced by the appellant are already on record as Ex.P1. Therefore, this document is also not required to be produced. Further the partition deed dated 08.04.1973 is also on record as Ex.P2. Therefore, this document is also not required to be produced again. Rest of the documents produced by the appellant along with this application appears to be necessary for proper appreciation of the facts and evidence of the matter.

10. These documents intended to be produced by the appellant may throw light on deciding the matter in justified manner. The appellate court is under obligation to give an opportunity to the other side to produce additional evidence by way of rebuttal. Hence, application filed by the Appellant No.4 seeking production document as additional documentary evidence and to lead evidence on the said documents needs to be allowed to do substantial justice to parties.

11. Accordingly, I.A.No.5 filed by the Appellant No.4 seeking production document as additional documentary evidence and to lead evidence on the said documents deserves to be allowed. Accordingly, Point No.1 is answered **Partly in the Affirmative.**

POINT No.2:-

12. For the reasons stated above, I pass the following:

: ORDER :

I.A.No.5 filed by the Appellant No.4 under Order 41 Rule 27 R/w. Section 151 of CPC., seeking production of document as additional evidence, is allowed in part.

The appellant is permitted to produce the documents in Sl.No.3, 4, 6 to 12 and to lead evidence on the said documents.

For additional evidence of appellant by: 22.09.2023.

(Dictated to the stenographer, transcribed and typed by her, added some paragraph on computer, corrected and then pronounced by me in the open Court, on this the **08th August, 2023**)

**(Sujatha M. Sambrani)
Senior Civil Judge & JMFC.,
K.R.Nagar.**