

IN THE COURT OF THE PRINCIPAL JUDGE,
CITY CIVIL COURT, CHENNAI

Present: **Thiru. S. Karthikeyan**, M.A., M.L., M.Sc., P.G.D.C.F.Sc., P.G.D.D.F.,
Principal Judge

Tuesday, the 7th day of April 2026

I.A.No.2/2025
in
A.S.No.49/2025

C. Sitrarasu

... Petitioner/Appellant

Vs.

1. Roshanlal
2. Rathan Bhai
3. S. Thangamani
4. R Shylaja
5. R. Logaranjani
6. R. Yogesh
7. B. Rajasekar

.... Respondents/Defendants

This petition came up on 12.03.2026 before this court for hearing in the presence of M/s. G. Krishnamurthy, S.L. Venkatesan, K. Nagarajan, K. Vishwajeeth Yogeshwara, S. Sathish, D. Swarnalakshmi, D. Harikrishnan, the Counsel for the petitioner and the respondents 1 to 7 remained absent and set exparte even after effecting sufficient service and upon hearing the petitioner and on perusal of the records, this Court delivered the following :

ORDER

The petitioner has come up with this petition to receive the additional documents, namely 1. Bill of Property Tax, 2. Electricity Bill Payment, 3. Revision Property Tax Notice, 4. Property Tax paid till 2023, 5. Show Cause Notice by Corporation of Chennai as evidence in A.S.No.49/2025.

2. Petitioner, in his petition, submitted as follows:

The petitioner was illegally disturbed to enjoy his position and therefore, he did not pay property tax till 2018. He had paid property tax till 2021. At the time of filing since, he was not in possession of documents. The documents namely, 1) Bill of Property Tax in respect of Item II of suit schedule property dated 12.04.2018; 2) Electricity Bill Payment in respect of Item I of suit schedule property dated 12.04.2018; 3) Revision Property Tax Notice in respect of Item II of suit schedule property dated 25.03.2023; 4) Property Tax paid till 2023 in respect of Item II of suit schedule property dated 13.02.2023 and 5) Show Cause Notice by Corporation of Chennai, dated 19.07.2023. The above stated documents were not available at the time of filing appeal. It is most expedite to allow this petition because without this additional document, there may not be proper adjudication of the issues to be decided by this court. Hence, prays to allow this petition.

3. Respondents 1 to 3, though notice was served on them, they did not appear to contest the appeal. In this petition, though R4 to R7 served with notice, they have not filed any counter, even after sufficient opportunities. Therefore, their chance of filing counter is closed on 19.02.2026 and they were set exparte. Petitioner side heard.

4. The point for determination is,

Whether the additional evidence sought to be let in on the side of the petitioner is to be allowed or not?

5. Answer:

The present petition has been filed under Or.41 Rule 27(1)(a) of CPC seeking permission of this court to let in additional evidence at the appellate stage. Therefore this application was heard along with the appeal. The learned counsel for the petitioner has submitted his submission in the appeal as well as in this application. Before proceeding to answer the question involved in this interim application, it is necessary to refer to the procedure to be followed to receive additional evidence at the appellate stage.

6. The Hon'ble High Court, Madras in Selvaraj Vs. Ravichandran in S.A.No.653/2023, dated 28.04.2015 has culled out the procedure to receive additional evidence at the appellate stage as below:

"6. By a catena of cases, the procedure for considering an application filed Order 41 Rule 27 C.P.C has been laid down by the Apex Court as well as the High Courts. For better appreciation, Order 41 Rule 27 is reproduced here under:-

"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 notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise if due diligence, be produced by him at the time when the decree appealed against was passed, or)

(b) the Appellate Court may 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.

7. In Union of India vs. Ibrahim Uddin and Another reported in (2012) 8 SCC 148, the Supreme Court has made the following observation:

"An application under Order 41 Rule 27 CPC is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved."

"The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court."

8. In *K.R.Mohan Reddy vs Net Work Inc. Represented through MD* reported in (2007) 14 SCC 257, the Supreme Court made the following observation:

" It is now a trite law that the conditions precedent for application of clause (aa) of sub-rule (1) of Rule 27 of Order 41 is different from that of clause (b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand if clause (b) to sub-rule (1) of Rule 27 of Order 41 CPC is to be taken recourse to, the appellate court is bound to consider the entire evidence on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant was necessary."

9. In a decision reported in (2013) 7 MLJ 471 (*Jayamoorthy and others Vs. Palani and others*), this Court has held as follows:-

15. As per the above said rule, the additional evidence can be taken either by the appellate court itself or the appellate court can direct the lower court from which appeal has come or any other court subordinate to it to take evidence and transmit the same to the appellate court for being considered in the appeal. In either case, the appellate court has to indicate in its order allowing the application under Order XLI Rule 27, the points on which the additional evidence is to be adduced. A reading

of the paragraph extracted from the judgment of the lower appellate court will show that the learned lower appellate judge, either in ignorance of the said provision or in utter disregard for the same, has omitted to follow the procedure. Therefore, this court does have no hesitation in coming to the conclusion that the learned lower appellate judge has committed an error in not following the procedure contemplated under Order 41 Rule 27 and Rule 28 CPC in dealing with an application seeking permission to adduce additional evidence in the appellate stage. This court also holds that the learned lower appellate judge has committed a grave error in law in simply marking the documents produced by the first respondent herein (appellant before the lower appellate court) giving them exhibit numbers and referring them in the judgment of the lower appellate court. It is obvious that the admissibility, genuineness and reliability of the documents produced along with the application filed under Order 41 Rule 27 were challenged by the opposite parties. That being so, the learned lower appellate judge should not have chosen to simply mark the documents as exhibits on the side of the plaintiff and proceed with the disposal of the appeal. The procedure for taking additional evidence in the appellate stage has not been followed. Hence this court answers both the substantial questions of law in favour of the appellants?.

10. The principle laid down therein is to the effect that an Appellate Court dealing with an application under Order 41 Rule 27 C.P.C should hear the application along with the appeal and consider the same together with the entire evidence adduced before the Court below to find out whether the case falls under sub clause (b) of Rule 27 (1) under Order 41 C.P.C.

11. Of course, the learned lower Appellate Judge has adopted the correct procedure in hearing the application with the Appeal. But it shall not be desirable to incorporate the order allowing such an application in the judgment itself. There cannot be any quarrel over the proposition that, if the Court comes to the conclusion that an application under Order 41 Rule 27 C.P.C deserves to be dismissed, the same can be incorporated in the judgment and the judgment in the appeal on merits may be pronounced. When the Court comes to the conclusion that such an application is to be allowed, the normal procedure is to pass a separate order, follow the procedure for recording additional evidence and thereafter decide the appeal after giving an opportunity to the parties to advance arguments based on the evidence already available and the additional evidence recorded in the appeal. This procedure can be dispensed with under only one circumstance, that is when the parties consent for not only allowing the application but also for marking those documents, without there being any necessity to examine any witness in proof or disproof of such document. In such cases alone, the additional documents can be marked as additional evidence and the Appellate Court can proceed with the pronouncement of the judgment incorporating the order allowing the application under Order 41 Rule 27 C.P.C and also the factum of marking those documents by consent and of hearing the arguments advanced on both sides on the basis of the additional documents also.

12. In the case on hand, though the appellants in the appeal before the lower Appellate Court have chosen to prefer application seeking leave of the Appellate Court to adduce additional evidence, it is brought to the notice of this Court that the application was resisted by the respondent in the appeal and still the lower Appellate Court chose to allow the

application filed by the appellants under Order 47 Rule 27 C.P.C. It is also an admitted fact that the respondent in the appeal before the lower Appellate Court did not give consent for marking the documents without the necessity of examining the witnesses to prove those documents or establish the relevancy of those documents. Under such circumstances, the lower Appellate Court ought not to have ventured to incorporate the order allowing the applications in the judgment itself. The lower Appellate Court ought to have passed an order in the applications under Order 41 Rule 27 C.P.C separately and thereafter, followed the procedure contemplated under Rule 28 C.P.C for recording additional evidence. Rule 28 under

Order 41 C.P.C. reads as follows:- "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."

13. As per Rule 28, such additional evidence can be recorded either by the Appellate Court itself or it can direct the Court from which the appeal has arisen to record the additional evidence and transmit the same. Apart from the trial Court, any Court subordinate to the Appellate Court may also be directed to record the additional evidence and transmit the same to the Appellate Court. While directing the trial Court or any other subordinate Court to do the job of recording the additional evidence, the lower Appellate Court has to specify the points to which the additional evidence is to be confined (vide Rule 29)."

7. As per the above decision, it is clear that the application under Or.41 Rule 27 of CPC is to be heard along with the appeal and the appellate court is of the view

that it requires any document to be produced or any witness to be examined to enable it to pronounce the judgment, or for any other substantial cause, it can allow the additional evidence to be produced, or witness to be examined at the appellate stage. If the appellate court is of the considered view that the additional evidence is to be allowed, 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. Having this broad principle in mind, let this court may examine whether the additional evidence to be let in is necessary in this case or not?

8. On careful perusal of the documents filed by the petitioner, it is found that the appellant wants to produce the following 5 documents before this court so as to prove his possession in the suit schedule property, since the trial Court has held against the appellant that he has not proved his possession as on the date of filing of the suit. As per Or.41 Rule 27 of CPC, the additional evidence can be allowed only if the court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted (or) the party seeking to produce additional evidence, establishes 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) 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.

9. On careful perusal of the documents sought to be received as additional evidence, it is found that those documents are for the period from 2018 to 2023. The cause of the action for the present suit is said to have arose on and after 08.12.2017 and on 05.03.2018. According to the petitioner, the petitioner/appellant had not paid the property tax till 2018 and he has paid the property tax only in the year 2021. Therefore, at the time of filing of the suit, he was not in possession of the documents, which sought to be received at this stage.

10. On careful perusal of the documents sought to be received, it is found that all are subsequent to the filing of the suit. Though the appellant has not pleaded due diligence, this court is of the considered view that in order to effectively adjudicate the appeal in hand, the additional documents need to be received in evidence. Therefore, this court is inclined to allow this petition. Therefore, as per Or.41 Rule 28 of CPC, the appellant is directed to prove the documents before this court. Accordingly, the point is answered.

11. In the result, this petition is allowed. As per Or.41 Rule 28 of CPC., the appellant is directed to prove the documents before this court.

Dictated to the Stenographer directly, typed by her, corrected and pronounced by me in the open Court, this the 7th day of April 2026.

Principal Judge.

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