

IN THE COURT OF PRINCIPAL DISTRICT JUDGE AT TIRUVALLUR

PRESENT: Tmt. J. JULIET PUSHPA, B.Sc., M.L.,

Principal District Judge, Tiruvallur

Monday, the 6th day of October, 2025

I.A.1/2024 IN CMA NO.23/2019

(CNR NO. TNTR010070842)

1. K. Chandrasekaran
2. Vellasi Valli
3. Pedhappa (a) Padmavathy
4. Chinnapapa (a) Mageswaran

....Petitioners/ Appellants

Versus

S.K. Giri

.... Respondent/Respondent

This Petition coming on 11.09.2025 before me for final hearing in the presence of M/s A.R. Poovannan, learned counsel for the Petitioner and M/s M.K. Subramani, learned counsel appearing for the respondent and upon hearing the arguments of both side and upon perusing the material case records and having stood over for consideration till this date, this Court delivered the following:-

ORDER

This petition filed by the Petitioners under Order XLI Rule 27 of Civil Procedure code to receive the following documents for marking the same as defendant side documents.

- 1 Death Certificate of Mrs. Seethamma
- 2 Legal Notice dated 08.03.2020 of the respondent

2. Brief averments of the petition filed by the petitioners as follows :-

According to the petitioners/appellants, the respondent plaintiff filed the original suit against the petitioners/defendants for specific performance which was decreed in favour of the respondent/plaintiff on 03.11.2017. The petitioner was informed about the decree and judgment and they instructed the counsel to file appeal. Then requested to file application for copies of decree and judgment for filing the appeal. Though pleaded in the appeal grounds, he could not produce the documents at the time of filing the appeal. The non production of document is neither willful nor wanton and only for the above said reasons. The documents pleaded on the appeal grounds are vital to prove his case. Hence, prayed to receive the death certificate of Seethamma and legal notice dated 08.03.2020. Hence, this petition

3. Brief averments in Counter filed by the respondent is as follows :-

The respondent resisted the petition stating that Mrs. Seethammal is not a party to the proceedings. There is no word for what purpose the death certificate of Seethammal is filed along with the application. The second document , the notice dated 08.03.2020 is absolutely irrelevant to the appeal. The numbering of the application itself is wrong and erroneous. It is unable to understand in what manner it is vital document to the proceedings. The appeal has been filed as against the delivery order in the Execution petition. The ingredients to be made in the appeal is to be with regard to Court's order and not on decree and Judgment. It

is known fact that already the decree in OS No.100/2003 was executed. Then, how these documents are related with the delivery order has to be explained. The sole intention of the petitioners is to cause loss and hardship to the respondent by filing one appeal after another and one application after another. The petitioners are making obstacles for enjoyment of the fruits of the decree and judgment. These are all tactics and dilatory methods to prolong the issue without end. The petition filed under Order 21 Rule 97 application before the Execution Court was negatived. Therefore, there is no iota of truth in this application. Therefore, this application has to be dismissed.

4. No oral and documentary evidence on both sides.

5. Now, the points for consideration in this petition are:

1) Whether the petitioner is entitled to the relief as prayed for ?

2) Whether this petition is to be allowed?

6. **POINTS 1 AND 2 :-**

Heard both side.

This petition is filed by the petitioner, who is the appellant in the Civil Miscellaneous Appeal seeking permission to receive two documents, which are death certificate of one Seethamma and legal notice dated 08.03.2020 issued by the respondent.

7. The case of the petitioner is that he has filed the civil miscellaneous appeal as against the delivery orders of the Subordinate Judge, Tiruttani in E.P.No.68/2018 in OS No.100/2003 dated 04.07.2019 and dismissal of E.A.No.2/2019 in E.P.No.68/2018 .

8. On perusal of records it is seen that originally E.P.No.156/2008 was filed before the Sub Court, Tiruvallur for the original suit in OS No.100/2003 on the file of Sub Court, which was filed for specific performance by the respondent herein as against the petitioners. The suit was decreed as prayed for on 06.11.2007. Subsequently, the respondent filed E.P.156/2008 before Sub Court, Tiruvallur and the sale deed was also executed in favour of the respondent on 15.02.2010. Thereafter, the respondent filed EP No. 68/2018 before the Sub court, Tiruttani for the delivery of the property which is situated in Suriyanagaram Village, Tiruttani Taluk. In the Execution petition, property was already delivered on 26.04.2019 and the delivery was recorded and E.P. was terminated on 06.07.2019. While E.P.68/2018 was pending, the petitioner filed E.A.No.2/2019 under Order 28(2) of CPC to advance the hearing from 06.06.2019, which was also dismissed on 04.07.2019 as infructuous. As against the dismissal order and also E.P.No.68/2018 dated 06.07.2019, the petitioner filed the present Civil Miscellaneous appeal.

9. The case of the petitioner is that at the time of filing of the appeal, they could not file the death certificate of Seethamma who is the 5th defendant in the original suit and 5th respondent in the Execution Petition in E.P.156/2008 and E.P.68/2018 and also the legal notice dated 08.03.2020.

It is vehemently objected by the respondent that inspite of sufficient opportunities, the petitioner did not file the said documents before the trial court and the documents sought to be received are irrelevant to the case on hand.

10. On perusal of the 1st document, it is the death certificate of Seethamma who is the 5th defendant in the original suit and also 5th respondent in the execution petition. She is stated to have died on 23.09.2011. In the execution petition, all the five respondents were set exparte. The property was delivered on 26.04.2019 and the E.P. was terminated on 06.07.2019. It is recorded in the notes paper that on 30.11.2018 the notice to the respondents, 1, 2, 4 and 5 are held sufficient, no representation, no respondent, present, hence they were set exparte. It is the case of the petitioner that even as on 30.11.2018, the 5th respondent was died and there was no proper service and without proper service , she was set exparte, and as such, the delivery of the property and the termination of the execution petition have to be set aside.

11. In the above circumstances, this Court considers that the Document No.1 is a vital document for the just decision of the appeal. Though the respondent contends that already delivery was made and the execution was

terminated, since there is substantial force in the contention of the petitioners, they must be given proper opportunities to adduce the evidence. There is no bar on the petitioner to produce the documents and to receive the same in the appeal.

12. No prejudice would be caused to the respondent since already delivery was made and also the matter will be decided in the appeal on merits. The petitioner states that inspite of diligent efforts, he could not file the documents sought to be received before the trial Court since while terminating the execution petition , the trial court had not given any opportunity to file those documents.

13. The learned counsel for the petitioner relied upon the authority of the Hon'ble Apex Court in Sanjay Kumar Singh Vs. State of Jharkhand (CA.1760/2022 SC 268), wherein the Hon'ble Apex Court, held that

“ An application seeking to adduce additional evidence can be allowed where (1) the additional evidence sought to be adduced removes the cloud of doubt over the case and (2) the evidence has a direct and (3) 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.....”

14. Admittedly, the petitioners seek to set aside the orders of the trial Court on the ground that without proper service and even the service was held sufficient on the deceased person. Hence, the same is perverse to the Law. ground that relevant documents substantiating his claim was not produced. Now,

the petitioner wants to adduce the additional documentary evidence of death certificate of the 5th respondent in the execution petition.

15. The respondents do not deny the validity and genuineness of the documents sought to be received as Document No.1 which is the death certificate of 5th respondent in the execution petition. Even if the petitioner is permitted to adduce the above said documentary evidence, he has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law. This Court relies upon the authority of the Hon'ble Apex Court reported in (2022) 7 SCC 247(Sanjay Kumar Singh v. State of Jharkhand), wherein it has been observed as under: -

““7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where 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. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate

court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar [(2015) 17 SCC 713], the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that 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.”

15. The petitioners have sought for only receiving the documents alleging that no opportunity was given to produce those documents setting them as exparte. Therefore, this Court considers that an opportunity has to be given to the petitioner for adducing all the documentary evidence on the side to prove his claim in the appeal. Moreover, no prejudice would be caused to the respondent by receiving these documents, since mere filing of the documents does not amount to its proof and relevancy as the same shall be decided by this Court while pronouncing the judgment and the respondents have opportunity to assail these documents as to its relevancy and proof.

16. Considering the nature of the documents sought to be received, as no prejudice would be caused to the respondents by receiving these documents, as

the respondents will have ample opportunity to object the proof and relevancy of these documents sought to be received and also this Court finds that this petition deserves to be allowed.

In the result, this petition is allowed, subject to proof and relevancy of the documents sought to be received. No costs.

Dictated by me to the Steno-Typist, taken down, transcribed and typed by him, corrected and pronounced by me in the open Court on this, the 6th day of October, 2025.

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**

Petitioner & Respondent side
Witnesses and exhibits : NIL

**PRINCIPAL DISTRICT JUDGE,
TIRUVALLUR**