
(2005) 12 KAR CK 0044
In the Karnataka High Court
Case No : Writ Petition 5234 of 2005

John C. Thomas

APPELLANT

Vs

P.M. Chandy

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2006) 2 KCCR 814

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant;

Judgement

Ajit J. Gunjal, J.—It is noticed, that the respondent is served and unrepresented.

2. The respondent herein had filed the suit "against the petitioner for recovery of money. The said suit was decreed by judgment and decree dated 28.2.1997. The petitioner has challenged the said judgment and decree in R. A. 135/99. During the pendency of the appeal, the petitioner files an application under Order XLI Rule 27, C.P.C. for additional evidence. The learned, appellate judge has rejected the said application on the ground that it is not permissible at this point of time to lead additional evidence. Annexure-A dated 15.10.2001 is the impugned order.

3. Sri K.M. Hataraj, learned Counsel appearing for the petitioner, submits that in the normal course, an application for additional evidence will have to be heard along with the main appeal and cannot be disposed of at the threshold.

4. The said contention has to be accepted in view of the judgment of this court reported in 1988 (2) KarLJ 388 (Sreenivasa Krishnappa Bilagi v. Shivappa Channabasappa) .

5. Time and again, this court has said that any interlocutory application in the nature of additional evidence, amendment of the pleadings, either plaint or written, statement, cannot be disposed of at the threshold; it will have to be

heard along with the main appeal. This is a fallacy which has been committed by the learned appellate judge.

6. Consequently the impugned order at Annexure-A dated 15.10.2001 passed in R.A.135/99 is set aside. I.A.II is remitted to the learned appellate judge to be heard along with the main appeal.