

(1948) 08 MAD CK 0015
In the Madras High Court

Kanjanur Sri Agneswaraswami Devasthanam

APPELLANT

Vs

Thillai Govinda Pandithan

RESPONDENT

Date of Decision : 13-08-1948

Acts Referred:

Citation : (1948) 61 LW 711 : (1948) 2 MLJ 413

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The appellant, basing his right to possession of the suit property on a lease executed in 1935, filed the suit out of which this civil

miscellaneous appeal arises. The District Munsiff decreed the suit. In appeal, the learned Subordinate Judge came to somewhat different

conclusions on questions of fact; and admitted in evidence certain documents tendered by the defendant. He then said:

I should think that the matter requires re-consideration as to whether the defendant is entitled to a permanent tenancy so long as he pays rent or so

long as he renders services. I find that in the interests of justice the suit should be remanded.

The learned advocate for the appellant attacks this order on two grounds: (1) that the documents were improperly admitted, and (2) that in any

event, the provisions of Order 41, Rule 23 were not complied with and that the remand order was wrong.

2. The order admitting the documents was this:

I find that these documents are material for the purpose of deciding the defence of the defendant....

There is nothing in this order which indicates that the learned Judge gave his

mind to the requirements of Order 41, Rule 27. It is difficult to fit these words into the framework of any one of the three clauses to Order 41, Rule 27(1). They would appear to be more in accordance with Order 41, Rule 27(1)(c) than with either of the other two clauses; but the application was made under Order 41, Rule 27(1)(b). The learned Judge has given no indication that he was of opinion that the defendant, notwithstanding the exercise of due diligence, could not produce the document at the trial.

3. Even if the documents were properly admitted in evidence, there would still be no ground for an order of remand; for an order of remand can be passed only when the Court has decided that it is necessary to set aside a decree. The admission of fresh evidence affords no ground for remanding a suit, because the evidence could and should be considered by the appellate Court, together with the evidence already on record.

4. This appeal is therefore allowed, and A.S. No. 101 of 1946 remanded to the Sub-Court, Kumbakonam, for re-consideration of the petition for admission of the additional evidence in the light of the provisions of Order 41, Rule 27. If the documents are not admitted, then clearly, there will be no ground for remand. Even if they are, the learned Judge will have to consider whether it is necessary to set aside the decree and remand the suit. The costs of this appeal will abide the result.