

(2011) 07 KL CK 0168
In the High Court Of Kerala
Case No : OP (C) . No. 1072 of 2010 (O)

Omana John

APPELLANT

Vs

John John

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

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

Citation : (2011) 07 KL CK 0168

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : T. Krishnan Unni, for the Appellant; S. Muhammed Haneeff, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—In spite of consistent decisions this Court and the Supreme Court (See Malayalam Plantations Ltd. Vs. State of Kerala and Another, has taken in the matter, the appellate court has ventured to decide an application under Order XLI Rule 27 of the CPC (for short, "the Code") even before the appeal was taken up for hearing. As per Ext.P5, order on Ext.P4, application learned Sub Judge, Chengannur has allowed the application in part receiving certain documents produced in appeal while rest of the documents were not received. Learned Senior Advocate appearing for Petitioner/Plaintiff submits that all the documents were produced in the trial court but, though office of the trial court endorsed that the documents are received the same were not marked in evidence. Copies of the said documents were produced in appeal along with Ext.P4, application to receive the same on which the impugned order was passed. I have heard learned Counsel for Respondent as well.

2. Learned Counsel for Respondent submits that Ext.P4, application should have been heard along with appeal. It is also pointed out that along with Ext.P4, application Petitioner had filed a witness schedule requesting the appellate court to summon witnesses to prove the documents.

3. As above noted, the application for reception of additional witness ought to have been heard along with appeal itself and appropriate orders passed. Learned Counsel for Respondent submits that it is only in the contingencies stated in Order XLI Rule 27 of the Code that the appellate court is invested with the power to receive additional evidence. However, in view of the direction I propose to make it is not necessary for me to go into the question whether any contingency requiring reception of additional evidence exist in the present case. That is a matter which learned Sub Judge has to decide while hearing the appeal.

4. In view of what I have stated, Ext.P5, order on Ext.P4, application is liable to be set aside. Ext.P4, application shall be heard by the learned Sub Judge while deciding the appeal.

Resultantly this original petition is allowed. Ext.P5, order dated November 10, 2010 on I.A. No. 315 of 2009 (in A.S. No. 151 of 2008 of the Court of learned Sub Judge, Chengannur) is set aside. Learned Sub Judge is directed to dispose of I.A. No. 315 of 2009 along with appeal as provided under law.