2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

CRP.No.3767 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 11-11-2026 **Delivered On: 16-11-2026**

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

Civil Revision Petition No.3767 of 2023
& CMP.No.23434 of 2023

CNR:{HCMA011824392023}

Case QR

1. Andalammal
   W/o. Late.Krishnan,
   No.14, Pillaiyar Koil Street,
   Manvely, Ariyankuppam,
   Pondicherry

2. Aruna, D/o. Krishnan
   W/o. Dhanasekaran
   No.18, Vinayakar Koil Street,
   Saram, Pondicherry - 7

3. Anandhi, D/o. Krishnan
   W/o. Ilangovan, No.14,
   Pillaiyar Koil Street, Manvely, Ariyankuppam,
   Pondicherry.

4. Vanathy, D/o. Krishnan
   W/o. Murugan, Bodi Chetty Theru,
   Thirupapuliyur, Cuddalore.

5. Lakshmipathy @ Mukundan

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

S/o. Krishnan, No.14,
Pillaiyar Koil Street, Manvely, Ariyankuppam,
Pondicherry.

...Petitioners

Vs

Djealatchoumy
W/o. Irussappane
No.21, Pillaiyar Koil Street,
Manvely, Ariyankuppam,
Pondicherry - 7

...Respondent

PETITION under Article 227 of The Constitution of India against the fair and decretal order dated 29.8.2023 in I.A.No.10 of 2023 in O.S.No.184 of 2000 on the file of the Principal Subordinate Court, Puducherry.

For Petitioners: Mr.Sharath Chandran

For Respondent: Mr.P.Dinesh Kumar for
Mr.D.Ravichander

ORDER

This civil revision petition has been filed under Article 227 of The Constitution of India against the order dated 29.8.2023 in I.A. No.10 of 2023 in O.S.No.184 of 2000 on the file of the Principal Subordinate Court, Puducherry (for short, the Court below) wherein

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN

Order QR

WEB COPY

the application filed by the petitioners/D5 to D9 to make necessary corrections in the order of witnesses and marking of documents, came to be dismissed.

2. Heard the learned counsel for the petitioners/D5 to D9 and the learned counsel appearing on behalf of the respondent/plaintiff.

3. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

4. The respondent - plaintiff filed the said suit seeking for the relief of partition and for allotment of 1/5th share in the suit properties. The said suit came to be dismissed by the Court below vide judgment and decree dated 19.1.2017. Aggrieved by that, the respondent/plaintiff filed A.S.No.12 of 2017 before the Principal District Court, Puducherry and it was allowed vide judgment and decree dated 13.2.2019 and the case was remanded to the file of the Court below for fresh disposal.

5. After remand, one Mr.Babu was examined in chief on 03.2.2023 as P.W.1 and Ex.A.1 to Ex.A.16 were marked through him.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN
WEB COPY

According to the petitioners/D5 to D9, this witness should have been examined as P.W.2 since he was examined in that capacity in the said suit prior to remand. Hence, they filed the said application to set right the records, rank of the said Mr.Babu as P.W.2 and set right the marking of documents through this witness.

6. However, by the impugned order, the Court below came to the conclusion that after the remand of the case by the Appellate Court directing re-trial, the evidence is taken afresh, that therefore, the said Mr.Babu was examined as P.W.1 and that the documents were marked through him as Ex.A.1 to Ex.A.16. Aggrieved by this order, the above revision has been filed before this Court.

7. The main issue that is involved in the present case is as to whether, on remand made by the Appellate Court, the evidence recorded earlier gets wiped off and a fresh trial has to be conducted or as to whether the evidence recorded and the documents marked after remand will be considered as additional evidence/additional documents, which will be considered along with the evidence already recorded and the documents already marked in the said suit before remand.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

8. The learned counsel for the petitioners/D5 to D9 traced the history of Order XLI Rule 23 of the Civil Procedure Code (CPC) and submitted that the Select Committee on the Bill to consolidate and amend the law relating to the procedure of the Court of Civil Judicature submitted a report on 21.3.1903 wherein the relevant portion is extracted as hereunder :

> *"Clause 562.-Exception has been taken to the expression "grounds other than the merits" which, in paragraph (a) as provisionally drafted, it was proposed to substitute for the words "preliminary point" on the authority of certain cases [Sheoambar Singh v. Lallu Singh, referred to in Sohawan v. Babu Nand (1886 I.L.R. 9 All. 26, note at P.32; Muhammad Allahdad Khan v. Muhammad Ismail Khan (1888), I.L.R. 10 All. 289; Ramachandra Foishi v. Hasi Kassim (1892). I.L.R. 16 Mad. 207; Kanakammal v. Rangachariar (1896), I.L.R. 20 Mad. 25)]. It may often happen [Habib Baksk v. Baldeo Prasad (1901), I.L.R. 23 All. 167] that a remand is necessary in a case in which there has been a decision upon a part of the merits, but the point determined does not, in the opinion of the Appellate Court, amount to a complete and effectual adjudication on the whole matter in controversy. It has been reported to us that the practice in various*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

Provinces differs on the question whether evidence recorded in the proceedings leading up to the decree set aside under section 562 is in itself available as evidence during the retrial or whether it can only be made admissible, in the case of witnesses attending at the hearing, by examining them upon their previous depositions as statements recorded in a different proceeding. We are of opinion that, subject to all just exceptions, such depositions should, of their own force, be available as evidence."

9. The above report resulted in Notes on Clauses in the year 1908 wherein for Order XLI Rule 23, the statement of object and reasons was recorded as hereunder:

"Or. XLI, R. 23 - After due consideration the Committee have thought it safer not to give legislative sanction to the views enunciated in Habib Bakhsh v. Baldeo Prasad, (I.L.R. 23A 167). The power of reversal and demand is liable to be abused, while the procedure under S.566 is free from this liability and at the same time furnishes an effectual remedy.

The words at the end of the rule have been added to clear up a doubt which is stated by the Select Committee to exist as to whether evidence recorded at the original trial can be used on the trial after remand."

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

10. The 14th report of the Law Commission of India was submitted in the year 1958 and in so far as Order XLI Rule 23 was concerned, the Law Commission recommended an amendment and the relevant portion is extracted as hereunder:

> *"46. The power of remand by an appellate Court is regulated by Rules 23 and 25 of Order XLI. The power under Rule 23 is a strictly limited power. A case can be remanded under that rule only when the lower Court has disposed of the case upon a preliminary point and the finding on that point is reversed in appeal. In practice, cases often arise in which a remand is necessitated for some other reason. In such cases, in order to make a remand, the Courts have resorted to their inherent power under Section 151 of the Code. This is not a satisfactory position. Further, an order of remand under the inherent power of the Court is not appealable like an order under rule 23. An attempt has been made to get over this difficulty by the High Courts of Allahabad, Andhra Pradesh and Madras by empowering the appellate Court to remand a case if it thinks it "necessary in the interest of justice" (Madras) or "where an appellate Court has reversed a decree and all questions arising in the case have not been decided" (Allahabad). The Uttar Pradesh Judicial*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

Reforms Committee has recommended an amendment to Rule 23 on the lines of the amendment made in Madras. We recommend an amendment of the rule empowering the appellate Court to remand a case whenever it thinks it necessary in the interests of justice."

11. It is clear from the above that apart from Order XLI Rule 23, which was incorporated providing power of remand to an Appellate Court in a case where the Trial Court disposed of the suit upon a preliminary point and which was reversed in the appeal and remanded, there are many other circumstances, which necessitated the remand of cases and in such circumstances, the Courts started resorting to inherent power under Section 151 of the CPC.

12. In the meantime, there was also a reference to the Madras Amendment, which happened in the year 1930. For proper appreciation, the said Madras Amendment is extracted as hereunder:

"MADRAS

Substitute the following for Rule 23:

'23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

reversed in appeal, or where the Appellate Court, in reversing or setting aside the decree under appeal considers it necessary in the interests of justice to remand the case, the Appellate Court may by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just just exceptions, be evidence during the trial after remand.'

[R.O.C.No. 5105 of 1930.]"

13. Taking into account those provincial amendments made, recommendations were made to the Law Commission of India to amend the rule, empowering the Appellate Authority to remand a case whenever it thinks fit and necessary in the interests of justice.

14. As a step forward, the Law Commission of India submitted the 27th report recommending to insert Order XLI Rule 23A wherein the relevant portions read thus:

"Order XLI, Rule 23A (New)

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

After Rule 23 of Order XLI of the First Schedule to the principal Act, the following rule shall be inserted, namely:-

"23A. Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23."

.....

Order XLI, Rule 23A (New)

This carries out the recommendation made in the 14th Report, and is intended to widen the powers of the appellate court to remand a case in the interests of justice.

See also the Allahabad, Andhra and Madras Amendments to Order XLI, Rule 23 and Punjab Order 41, Rule 23A. Under-mentioned cases on these Amendments are helpful.

Kewalram v. Mihilal, A.I.R. 1960 All. 655.

Veerbhadrappa v. Venkatappa, A.I.R. 1961 A.P. 226.

Ramkrishna v. Rangayya, A.I.R. 1954 Mad. 783."

15. Ultimately, Order XLI Rule 23A came to be incorporated in the 1976 amendment and the said provision is extracted as hereunder:

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

> *"23A. Remand in other cases— Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the Appellate Court shall have the same powers as it has under Rule 23."*

16. The learned counsel for the petitioners submitted that the Legislature has consciously incorporated under Rule 23A that the Appellate Court shall have the same powers as it has under Rule 23; that therefore, the last portion in Rule 23 after the semi colon, which provides that the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand, will apply and when the matter is remanded otherwise than on a preliminary point and a retrial is ordered, the evidence, which is already recorded in the said suit before remand does not get effaced and it remains on record and at the best, further evidence can be recorded and further documents can be marked, which will be considered as an additional evidence and which will be dealt with along with the evidence that is already available on record.

17. In order to substantiate the said submission, the learned

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

counsel for the petitioners relied upon the judgment of the First Bench of the Delhi High Court in ***Amal Mal Sindhi Vs. Ram Prakash [S.A.O.No.103 of 1973 dated 08.11.1978]*** and specifically relied upon the following portions :

> *"WHAT IS RETRIAL:*
>
> *9. Order XLI Rule 23 of the Code of Civil Procedure says that when the decree is reversed in appeal on a preliminary point the appellate court may remand the case with a direction to readmit the suit under the original number in the register of civil suits and to proceed to determine the suit. The evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand. Rule 23A inserted by the Civil Procedure Code (Amendment) Act, 1976, expressly uses the word "retrial" in ordering the remand otherwise than on a decision on a preliminary point.*
>
> *10. It is clear that a retrial does not mean the reinstitution of the suit. The suit is already pending. It had come to an end by being dismissed or allowed, but is revived by the order of remand made by the appellate court. Of course, in a broader sense even the appeal in which the order of remand is made is a continuation of the suit for certain purposes, but with that we are not concerned. For our purposes*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

we are concerned only with the proceeding which is pending in a trial court or before a Controller under the Delhi Rent Control Act. It is the pendency of this proceeding which had ended and which is revived by the order of remand. The pendency begins with the filing of the petition. The defence of the tenant and the evidence recorded (if any) by the Controller are also parts of the proceedings without them the Controller could not have proceeded to dispose of the petition.

11. The question is whether the interlocutory order passed under Section 15(1) or Section 15(2) is a part of the proceeding. The test for determination of what is a part of the proceeding is that such a part must form part of every proceeding. An order under Section 15(1) is such an inevitable part of the proceeding in which the petition for eviction is pending. For, it must be passed by the Controller in a proceeding for eviction based on non-payment of rent. We can say, therefore, that just as a petition by the landlord and the defence by the tenant as also evidence given by them form a part of the proceeding an order under Section 15(1) also form part of the proceeding."

18. The learned counsel for the petitioners also relied upon the judgment of a learned Single Judge of the Calcutta High Court in

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

Sampa Acharyya Vs. Malay Acharyya [S.A.No.129 of 2022 dated 30.6.2023] wherein the relevant portions read thus:

> *"29. The suit, it goes without saying can be remanded under Order 41 Rule 23, Rule 23A and Rule 25 of the Code of Civil Procedure which enunciate :-*
>
> *'23.Remand of case by appellate court.— Where the court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the appellate court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the court from whose decree the appeal is preferred, with directions to readmit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject to all just exceptions, be evidence during the trial after remand.*
>
> *23-A. Remand in other cases.—Where the court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the appellate court shall have the same powers as it has under Rule 23.*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

25. Where appellate court may frame issues and refer them for trial to court whose decree appealed from.—Where the court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the appellate court essential to the right decision of the suit upon the merits, the appellate court may, if necessary, frame issues, and refer the same for trial to the court from whose decree the appeal is preferred, and in such case shall direct such court to take the additional evidence required; and such court shall proceed to try such issues, and shall return the evidence to the appellate court together with its findings thereon and the reasons therefor within such time as may be fixed by the appellate court or extended by it from time to time.'

30. Rule 23 of Order 41 of the Code of Civil Procedure unerringly indicates that the evidence recorded during the original trial shall be evidence during the trial after remand. The principle laid down under Rule 23 is applicable to Rule 23A of Order XLI of the Code of Civil Procedure.

31. Rule 25 enunciates the Appellate Court may frame issues and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take additional evidence required; and

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

such Court shall proceed to try such remand, and shall return the evidence to the Appellate Court together with its finding therein and the reason thereafter within such time may be fixed by the Appellate Court or extended by it from time to time.

In this regard, we may also rely upon the decision of Hon'ble Supreme Court in J. Balaji Singh vs. Diwakar Cole & Ors. (supra) wherein Hon'ble Supreme Court held :-

'14.2. So far as Rule 23-A is concerned, it enables the Appellate Court to remand the case to the Trial Court when it finds that though the Trial Court has disposed of the suit on all the issues but on reversal of the decree in appeal, a re-trial is considered necessary by the Appellate Court.

14.3. So far as Rule 25 is concerned, it enables the Appellate Court to frame or try the issue if it finds that it is essential to the right decision of the suit and was not framed by the Trial Court. The Appellate Court in such case may, accordingly, frame the issues and refer the same to the Trial Court to take the evidence and record the findings on such issues and return to the Appellate Court for deciding the appeal. In such cases, the Appellate Court retains the appeal to itself.'

32. Therefore, it can safely be said upon perusal of the aforesaid provisions, that law does

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

not permit the Court to shut its eyes to the evidence already recorded by the Court during trial before the order of remand was passed, of course subject to just exception.

This 'just exception' shall have to be indicated by the learned Court while passing the order of remand, taking lumen from Rule 23, or 23A of Order XLI of the Civil Procedure Code, it cannot be imported from nowhere.

33. It is expedient to reproduce the order of remand to appreciate the follow up action, taken by learned Trial Court. It was held by learned Appellate Court :-

'Since remand only on the point of counter claim may invite further complications in disposal of the entire matter completely and effectively, and since the points of plaint and counterclaim are interrelated to each other, let there be an open remand for adjudication of the suit and the counter claim fresh.

Hence it is

O R D E R E D

that the instant appeal be and the same is hereby allowed on contest but without any order as to costs. The judgment and decree dated 28.05.2009 passed by the learned Civil Judge, Senior Division, 2nd Court at Barasat, North 24 Parganas in Title Suit No- 69 of 2007 is set aside. The matter is sent back on remand for adjudication afresh, on both the plaint and the

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

counter claim.

The Learned trial court shall assess the court fees on counter claim within 15 days of the first appearance of the parties and the defendant shall pay the court fees upon the same within 15 days thereafter. If the defendant brings any application for amendment of counterclaim, the same shall be filed at the earliest opportunity and would be disposed of by the learned trial court in accordance with law. Then Learned Court shall frame the issues afresh after giving opportunity to the plaintiff to file written statement to the counter claim and shall determine the suit and the counter claim on hearing the evidence afresh, as per law, and would endeavour to dispose of the same as expeditiously as possible, without granting unnecessary adjournments to any of the parties, preferably within six months from the date of communication.

Send down the L.C.R. with copy of this judgment at once. Both the parties are directed to appear before the learned trial court on 29.2.2012 for receiving appropriate direction.'

34. Upon plain reading of the order it appears that purpose of remand was to allow the defendant to amend his counter claim and to adduce evidence, and also an opportunity was given to the plaintiff to file written statement and to adduce further evidence, if necessary. It

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

was never spelt out that the evidence already on record, should be expunged or to be treated as non-est. In absence of such mandate, it was not open to learned Trial Court to act in such a manner that would cause infraction to the procedural law.

35. Learned Appellate Court while passing the impugned judgement did not consider the relevant procedure as laid down under Order XLI Rule 23, 23A and 25 of the Code of Civil Procedure. Rule 23 and 23A envisage the evidence on record, subject to all just exceptions, be evidence during the trial after remand. Rule 25 of the Code of Civil Procedure speaks of recording additional evidence upon issues framed by learned Appellate Court.

36. It goes without saying that when law mandates a course of action in a particular manner, it is to be done in that manner only and not otherwise. In this regard, we can rely upon the judgement of Privy Council in the case of NAZIR AHMED VS. KING EMPEROR reported in 1936 SCC OnLine PC 41 wherein it is held :-

'..... that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods or performance are necessarily forbidden.'

37. In CHANDRA KISHORE JHA VS. MAHAVIR PRASAD & ORS. reported in (1999) 8 SCC 266, Hon'ble Supreme Court held as under :-

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

'17..... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. Kind Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 1253 (II)].'

38. In the case of CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH & ORS. reported in (2015) 13 SCC 722 Hon'ble Apex Court held :-

'14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law without deviating from the prescribed procedure.....'

39. Therefore, in absence of any direction, indicating just exception, both the Courts below had no reason to dismiss the suit and appeal only because the documents already admitted into evidence were not "re-exhibited". There was no reason for the learned Trial Court and learned First Appellate Court to hold that evidence on record got wiped out as an aftermath of order of remand by operation of law.

The plaintiff had no obligation to tender the documents, already admitted into evidence and taken on record as exhibits 1 to 6, to reexhibit the same, pursuant to the order of

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

remand. The interlocutory order no. 54 was passed and virtually affirmed ignoring the provisions as laid down under Order XLI Rule 23A of the Code of Civil Procedure. The oral testimony of the witness, after an order of remand, unless otherwise directed, is nothing but additional evidence.

40. Section 105 of the Code of Civil Procedure says :-

'Section 105 of Code of Civil Procedure 1908 "Other orders"

(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.'

41. Upon plain reading of the provision, it appears that every order, be it appealable or not, except an order of remand, may be assailed in an appeal from final decree on the following ground :-

a. that it is erroneous

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

b. and such error affects the decision of the suit. Hon'ble Supreme Court in the case of NAWAB SHAQAFATH ALI KHAN & ORS. VS. NAWAB IMDAD JAH BAHADUR & ORS. reported in (2009) 5 SCC 162 held:-

'38. It may be true that in terms of Section 105 of the Code of Civil Procedure when an appeal against the final decree is passed, legality of the said order could be challenged in the appeal. Only because a civil revision application has not been filed, the same, in our opinion, would not attract the principle of res judicata as an appeal from the final decree could still be maintained.'

42. In this case, as it is already pointed out by Mr. Mukherjee and quite correctly, the judgement impugned, is based on the reasoning given in the interlocutory order 54 dated 18th September, 2013. Therefore, provision of Sub-Section 1 of Section 105 of the Code of Civil Procedure is applicable.

43. Learned Courts below had no reason to insist for re-exhibiting the documents, already exhibited, while recording evidence of P.W. 1, after remand. Both the learned Trial Court and learned First Appellate Court committed grave error by holding that the evidence on record got obliterated with the order of remand. The evidence recorded by the learned Trial Court prior to the order of remand, by no stretch of

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

imagination can be said to have crossed the Oblivion with all the probative value of the documents admitted as exhibit 1 to 6.

44. Be that as it may in my humble opinion in the absence of any specific direction to expunge the evidence already on record, such evidence, be that oral and documentary, recorded before the order of remand shall have to be considered as evidence on record after remand. There was no cogent reason to pass the judgement impugned, on the ground that documents already on record were not re-exhibited. Such finding is perverse."

19. The learned counsel for the petitioners again relied upon the judgment of a learned Single Judge of the Kerala High Court in ***Murikyal Pavithran Vs. Murikyal Rohini [O.P.(C) No.114 of 2026 dated 27.1.2026]*** wherein the relevant portions read thus:

"2. The counsel for the petitioner submitted that Order 41 Rule 23 of the Code of Civil Procedure which deals with remand of cases by appellate court specifically says that evidence (if any) recorded during the original trial, shall, subject to all just exceptions, be evidence during the trial after remand. It is hence evident that unless the court had specifically stated that the evidence already recorded shall not be looked into, there is no question of fresh evidence being

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

let in to exclude what has already been placed on record. The court below appears to have taken a stand that if the appellate court had not made any observations then it is necessary that there should be a de novo trial ignoring the evidence which is already on record. The understanding of the court below does not appear to be correct. To that extent, the petitioner is entitled to succeed. This Court had only permitted additional pleadings to be incorporated and directed a fresh consideration. Any additional evidence can only be with regard to the additional pleadings incorporated. As far as the pleadings which are already on record evidence has already been recorded and it is not proper to exclude the entire evidence and go ahead with new evidence."

20. By relying upon the above judgments, it was submitted on the side of the petitioners that the term **'re-trial"** cannot be equated to '***de novo trial***' and on remand, the Trial Court can record further evidence, which will be considered as additional evidence and the same will be appreciated along with the evidence that is already recorded in the suit before remand. To substantiate this submission, reliance was also placed on the judgment of a learned Single Judge of the Orissa High Court in ***Sanatan***

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

Mohapatra Vs. Hakim Mohammad Kazim Mohammad [reported in AIR 1977 Orissa 194] wherein the relevant portions are extracted as hereunder:

> *"7. .....*
>
> *It was not case of an Appellate Court framing certain specific issues and referring them for trial to the trial Court, in which case the trial Court's jurisdiction is confined to determine those specific issues and not all the issues. Neither Rule 23 nor Rule 25 of Order 41 is applicable. This appears to me to be a remand under Order XLI Rule 23A of the Code of Civil Procedure. This rule speaks of an open remand and, in this case, after reading the remit order of the first appellate court, I am satisfied that the remit order is an open remand. The only restriction is that the trial Court is not to take fresh evidence on any matter involved in the issues, either old or new, except on the question of validity of the two registered sale deeds.*
>
> *8. The effect of the remand order is to relegate the suit to a stage where evidence has been collected on a number of issues and a fresh issue is framed and parties are allowed liberty to lead evidence on one aspect of that issue. In other words, the suit is relegated to the stage of trial where trial has commenced but is not concluded. The direction for a fresh disposal*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

obviously means a direction to dispose of the suit in accordance with law. There is nothing in the remit order nor is that order susceptible to an interpretation as amounting to prohibition to amend the pleadings, even though a case for amendment arose. As already indicated, the power and jurisdiction of the Munsif exercisable under the various provisions of the Code of Civil Procedure had not been whittled down at all.....”

21. The learned counsel for the petitioners also relied upon the judgment of the Hon’ble Apex Court in ***Satyajit Banerjee Vs. State of West Bengal [reported in 2005 (1) SCC 115]*** and placed reliance upon paragraph 27, which reads as follows:

“27. So far as the position of law is concerned we are very clear that even if a retrial is directed in exercise of revisional powers by the High Court, the evidence already recorded at the initial trial cannot be erased or wiped out from the record of the case. The trial Judge has to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on retrial.”

22. Per contra, the learned counsel for the respondent/plaintiff submitted that the precursor for Order XLI Rule 23 of the CPC is

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN
WEB COPY

Section 562 of the 1882 CPC. This provision, which was incorporated in the 1908 CPC, only provided for remand where the Trial Court disposed of the suit upon a preliminary point and the decree was reversed in appeal. In view of the fact that many other circumstances arose for remanding the case to the Trial Court, Courts started invoking Section 151 of the CPC. In view of the same, there were divided rulings pronounced by various High Courts.

23. The Madras High Court, in order to end this impasse, brought in the Madras Amendment in the year 1930. This amendment widened the discretion to remand cases and it prevailed till 1976 when Order XLI Rule 23A was incorporated in the CPC.

24. The learned counsel appearing on behalf of the respondent/plaintiff submitted that the term '***re-trial***' used in Rule 23A will only mean a '***de novo trial'*** since the decree of the Trial Court was set aside and the suit was remanded back to the Trial Court to be decided afresh; that the last limb of Rule 23 to Order XLI will not apply to the remand made under Order XLI Rule 23A since the last limb only contemplates a case where the evidence is let in on all the issues whereas the Trial Court decides only a preliminary issue, which gets reversed by the Appellate Court and the matter is

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN

WEB COPY

remanded to the Trial Court for considering all the issues and at that point of time, the evidence that is recorded earlier will remain intact to decide the remaining issues; and that it is not the scenario that arises where the remand is made under Order XLI Rule 23A.

25. The submissions made by the learned counsel on either side boil down to understanding the term '***re-trial'*** used under Order XLI Rule 23A of the CPC. In order to understand this term, it is not necessary for this Court to place reliance upon the last limb of Order XLI Rule 23 after the semi colon portion. That provision confines itself to those cases where the Trial Court only decides the preliminary issue and the same is set aside by the Appellate Court and the matter is remanded back to the Trial Court for trying all the issues. Order XLI Rule 23A was specifically brought in by the Legislature to deal with the remand made by the Appellate Court other than a situation contemplated under Order XLI Rule 23. Therefore, this provision has to be dealt with independently without attempting to read the last limb of Order XLI Rule 23 into Order XLI Rule 23A.

26. A careful reading of the judgments of the Delhi High Court,

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN
WEB COPY

the Calcutta High Court and the Kerala High Court makes it clear that the term '***re-trial***' does not mean re-institution of the suit. There is a marked difference between a ***re-trial*** and a ***de novo trial.*** In a de novo trial, the entire evidence gets wiped off and the suit is decided afresh on merits.

27. At this juncture, it is relevant to point out that the judgment of the Hon'ble Apex Court in ***Satyajit Banerjee,*** even though arose out of criminal proceedings, gives a fair idea as to the difference between a ***re-trial*** and a ***de novo trial***. The Hon'ble Apex Court held that a ***de novo trial*** can be ordered only by the Constitutional Courts in cases where the trial was found to be a farce, which was described as a mock trial and that in so far as the ***re-trial*** is concerned, the entire trial cannot be erased or wiped off from the records and it has to be considered along with the additional evidence recorded by the Trial Court after remand.

28. The scheme of Order XLI Rule 23A of the CPC does not vest the Appellate Court with the power to order ***de novo trial.*** At the best, the Appellate Court can only order for re-trial for those cases, which fall within the purview of Order XLI Rule 23A.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN

WEB COPY

29. In view of the same, in no case where the Appellate Court remands the matter to the Trial Court in exercise of jurisdiction under Order XLI Rule 23A, the evidence already recorded gets wiped out. It will remain intact and after remand, the evidence that is recorded will only be considered as additional evidence, which will be taken into consideration along with the original evidence recorded at the time of appreciation of the evidence.

30. To make the above proposition of law even more clearer, the Trial Court has to carefully read the judgment of the Appellate Court to find out the areas identified by the Appellate Court justifying the remand, record evidence and mark documents regarding those specific areas/issues identified by the Appellate Court to answer those issues effectively.

31. At this juncture, the judgment of the learned Single Judge of the Orissa High Court in ***Sanatan Mohapatra*** gives a clear indication that once a suit is relegated, the Trial Court must confine recording evidence to those issues identified by the Appellate Court and it should not take fresh evidence of all the other issues.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

Order QR

WEB COPY

32. To appreciate the above proposition of law in the decision of the Orissa High Court in ***Sanatan Mohapatra,*** the judgment passed by the Appellate Court dated 13.2.2019 in the present case assumes significance wherein the relevant portions read thus:

> *"20. .....*
>
> *Therefore, from the evidence of PW1, it reveals that some of the properties were left over and not included in the suit schedule. Further DW4 in his evidence, stated that "In Manaveli Village R.S.No.5/6B to an extent of 1 Are 7 Centiares was acquired for ECR Road and a sum of Rs.60,874/- was awarded to Kadiresan, Adinarayanan and Ramkrishnan. Further, he stated that 88 Centiares land was acquired by the Government in the name of Ramakrishnan and a sum of Rs.37,906/- was awarded. The above said amount was adjusted to Excise Department. Therefore, from the above said evidence it reveals that already some of the lands were acquired by the Government and the amount was awarded to D1 but the said amount has not been added in the suit. The plaintiff also not claimed the above said amount. Therefore, it is clear that the plaintiff has failed to include all the properties of Sababapthy Counder. But the lower court failed to frame proper issues and not given opportunity to the plaintiff to add all the parties in the suit. Without the presence of all*

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

the co-sharers the suit cannot be decided effectively and thereby it is appropriate remand back the case to the lower court for fresh disposal by affording chances to the plaintiff to implead all the parties who purchased the properties of Sababathy Counder from D1 and to include all the properties of Sababathy Counder by framing proper issues as to decide according to law. Thus Point No.3 is answered accordingly.

21. POINT NOS. 1,2, 4 & 5:

This court has already decided in the previous point that the suit is bad for non joinder of necessary parties and thereby the case has to be remanded back to the lower court for fresh disposal by affording chances to the plaintiff to implead all the parties and the properties of the father of the plaintiff according to law thereby the other Points regarding joint family properties of the plaintiff and the defendants, Plaintiff's joint possession and enjoyment over the properties, the validity and genuinity of the Will dated 28.9.1983 executed by Sabapathy Counder, and plaintiff's entitlement of 1/5th share in the suit properties cannot be decided without the proper evidence and the presence of proper parties. Thus the Points are answered accordingly.

22. POINT NOS. 6 & 7:

Since this court has decided in the earlier Points that the case has to be remanded back for

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

fresh disposal, it is appropriate to set aside the Judgment and Decree passed by the lower court by allowing this appeal. Point Nos.6 and 7 are answered accordingly.

23. POINT NO.8:

As discussed above, the case is remanded back to the lower court for fresh disposal by affording chances to the plaintiff to implead all the parties and the properties of the father of the plaintiff according to law. The lower court Judgment and Decree are liable to be set aside and the appeal is liable to be allowed. Point No.8 is answered accordingly.

24. In the result, the appeal is allowed and the Judgment and Decree in O.S.No.184/ 2000 passed by the Learned Principal Sub-Judge, Puducherry on 19.1.2017 are hereby set aside, and the case is remanded back to the lower court for fresh disposal by affording chances to the plaintiff by impleading all the parties and including all the properties of the father of the plaintiff. The lower court is directed to expedite the trial proceedings and dispose the case as early as possible preferably within six months in accordance with law. The parties are directed to appear before the lower court on 22.4.2019."

33. It is clear from the said judgment of the Appellate Court dated 13.2.2019 that the matter has been remanded to the Court

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN
Order QR

WEB COPY

below only to enable the respondent/plaintiff to implead all the parties and include all the properties. The Court below was also directed to expedite the trial proceedings after affording opportunity and deliver a final judgment in six months.

34. At the risk of repetition, this Court holds that whenever a remand is made under Order XLI Rule 23A, the Trial Court must first assess those grounds, on which, the Appellate Court remanded the matter back to the file of the Trial Court and focus on recording of evidence and marking of documents on those identified grounds. While doing so, the same witnesses, who were examined earlier, can be recalled and if any additional documents are marked apart from those documents that were already marked, they can be assigned proper document numbers. The rank of the witnesses already examined must be maintained even when they are recalled for further evidence. New rank to the witnesses shall be assigned only in case where additional witnesses are examined by either of the parties. Under no circumstances, the earlier evidence recorded before remand can be eschewed and the appreciation of evidence must take place by assessing the entire evidence, which includes both the earlier evidence as well as the additional evidence recorded after remand.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

VERDICTUM.IN

WEB COPY

35. In the light of the above discussions, the above civil revision petition is allowed and the impugned order dated 29.8.2023 in I.A.No.10 of 2023 in O.S.No.184 of 2000 on the file of the Principal Subordinate Court, Puducherry is set aside. The Court below is directed to record additional evidence of the witnesses, who were already examined in the same rank that was assigned to them prior to remand and in so far as the marking of documents is concerned, only if any new documents are marked, a new serial number shall be assigned and the existing documents that have already been marked need not be once again marked. If any new witnesses are examined, they shall be assigned a new rank. As stated supra, the entire evidence namely the evidence already recorded before remand and the additional evidence recorded after remand shall be assessed at the time of appreciation of the evidence and the purpose of remand by the Appellate Court shall be kept in mind and a final judgment shall be delivered in O.S.No.184 of 2000 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected CMP is closed.

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

16-11-2026

Index: Yes
Speaking Order
Neutral Citation: Yes

To
The Principal Subordinate
Court, Puducherry.

RS

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)

2026:MHC:4565

VERDICTUM.IN

WEB COPY

Order QR

N.ANAND VENKATESH,J

RS

CRP.No.3767 of 2023&
CMP.No.23434 of 2023

16-11-2026

https://www.mhc.tn.gov.in/judis (Uploaded on: 16/11/2026 12:58:13 pm)