



CRP (MD) Nos.198 and 199 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	04.07.2023
Pronounced on	14.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) Nos.198 and 199 of 2023

and

CMP(MD)Nos.1000 of 2023

1.Sathaiah

2.Sokkayi

3.Rajathi

... Petitioners/ Petitioners/Defendants
(in both petitions)

Vs.

Saravanakumar

... Respondent/Respondent/ Plaintiff
(in both petitions)

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 16.11.2022 made in I.A.Nos.456 of 2022 and 457 of 2022 in O.S.No.144 of 2013 on the file of the District Munsif Court, Aranthangi.

For Petitioners : Mr.R.Prasanna

For Respondent : Mr.N.Balakrishnan
(in both petitions)



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ORDER

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These civil revision petitions are preferred as against the fair and decreetal orders passed in I.A.Nos.456 of 2022 and 457 of 2022, dated 16.11.2022 in O.S.No.144 of 2013, on the file District Munsif Court, Aranthangi.

2. The facts in brief are as follows:-

The petition in I.A.No.456 of 2022 was filed by the defendants in the suit to reopen the defendants' side evidence. The petition in I.A.No.457 of 2022 was filed by the defendants in the suit for further examination of D.W1 on the side of the defendants. After contest, the trial Court dismissed the above petitions. In the impugned order the trial Court has observed as hereunder:-

"தாவா வழக்கானது இருதரப்பு சாட்சியங்களும் முடிக்கப்பட்டு வாதுரைக்காக நிலுவையில் உள்ளது. இந்திய சாட்சிய சட்டம் பிரிவு 68ன் படி ஒரு ஆவணத்தை எழுதி தந்தது மற்றொரு தரப்பினரால் மறுக்கப்படுமாயின் அதில் கண்ட சாட்சிகளை விசாரிப்பது அவசியமாகும். மேலும் இந்திய சாட்சிய சட்டம் பிரிவு



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90ன் படியான அனுமானம் மேற்படி பிரிவு 90(2)ன் கீழ் ஒரு வழக்கிற்கோ அல்லது எதிர்க்கட்சிக்கோ ஆதாரமாக இருக்கக்கூடிய ஆவணத்தை பொறுத்து ஏற்படாது என்று அறிவுறுத்தி உள்ளது. எனவே இந்த வழக்கில் வா.சா.ஆ.1ல் கண்ட கைரேகையைப் பொறுத்து மேற்படி கைரேகை மலையக்கோனார் மனைவி சொக்காயினுடையது இல்லை என நிரூபணம் செய்ய குறுத்திராக்கோட்டையை சேர்ந்த மலையக்கோனார் மனைவி சொக்காயி 10.03.1927ல் எழுதிக்கொடுத்த கிரைய ஆவணத்தை இந்நீதிமன்றத்தில் தாக்கல் செய்யவேண்டியது அவசியம் இல்லை என இந்நீதிமன்றம் கருதுகிறது.”

Aggrieved by this, the present revision petitions are filed.

3. The learned counsel appearing for the revision petitioner would submit that the reasons assigned by the trial Court for dismissing the above applications is incorrect. The trial Court has erroneously observed that as per Section 90(2) of Indian Evidence Act, the presumption shall not be applied to the document, which is a basis of the suit or defence. There is no Section as 90(2) in Indian Evidence Act and the said reasoning applies only to the State of Uttar Pradesh as per their State Amendment. It is further submitted that the reason assigned by the trial Court that as per Section 68 of the Evidence



Act, when the document is objected by other side, the witness to the document has to be examined. But the witnesses to the document are no more and the trial Court without proper consideration of Section 68 of Evidence Act, which clearly says that, it shall not be necessary to call and attesting witness in proof of execution of any document, which has been registered as in accordance with Indian Registration Act and passed the impugned order erroneously. The Trial Court ought to have considered the registered sale deed dated 10.03.1927 executed by one Sockayi W/o.Malayakonar, which is a crucial document to establish the fact that Ex.P1 is a forged document. Hence, the trial Court ought to have allowed the applications filed by the revision petitioners to reopen the case and recall the witness and to permit the witness to mark the above said document.

4. Whether the case ought to be reopened and whether a witness can be recalled under Order 18 Rule 17 of CPC for further elaboration of aspects left out in evidence already closed, is the issue for consideration in this case.

5. The respondent/plaintiff has filed a suit in O.S.No.144 of 2013 for



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the relief of declaration of title and permanent injunction restraining the defendants from interfering in the peaceful possession and enjoyment in the suit property by the plaintiff. The specific case of the plaintiff is that, the suit properties in item Nos.1 and 2 originally belonged to one Sokkayi, W/o. Malayakonar, who belong to Kurunthirakottai Village. Even before the settlement proceedings, the paternal grandmother of the plaintiff, namely Kaveri, W/o.Karuppaiahkonar on 07.05.1955 purchased the above property for valid consideration under an unregistered sale deed. After the said purchase, she was in possession and enjoyment of the suit Item Nos.1 and 2 by paying necessary kist to the said property. However, the patta No.468 was wrongly issued in the name of Sokkayi. But the said Kaveri, maternal grandmother of the plaintiff, was alone in possession and enjoyment of the suit property. The said Kaveri died intestate before 31 years leaving behind his son Chockalingam Konar, who is the father of the plaintiff and her daughters, namely, Mariayee, Amirtham, Seethalakshmi, Annalakshmi as her legal heirs. The father of the plaintiff, namely, Chockalinga Konar also died intestate on 08.08.2008 leaving behind the plaintiff, his mother Janaki, brother Ganapathi, Chithambram and his sisters, Rajaswari, Valarmathi, and



Sumathi as his legal heirs. In the year 2010, the properties belonged to the said Chockalinga Konar was partitioned among his legal heirs. In the said partition, a suit property was allotted to the share of the plaintiff. Thereafter, the plaintiff is in possession and enjoyment of the suit property. The defendants without any right or title over the suit properties, attempted to interfere with his peaceful possession and enjoyment in the suit properties. Hence, the plaintiff was constrained to file the above suit for declaration of title and consequential relief for permanent injunction.

6. The defendants resisted the claim of the plaintiff. In their written statement, they have admitted that the suit property originally belonged Sockkayi, W/o.Malayakonar. According to the defendants, the said Sockkayi and Malayakonar had two children namely Mari and Mangalam. The said Mari is the mother of the second defendant. The first defendant is the son of the second defendant. On 29.09.1934, the said Sockkayi purchased the suit property and was in possession and enjoyment of the same. After the demise of Sockkayi, the mother of the second respondent, namely, Mari as legal of Sockkayi was in possession and enjoyment of the suit properties. The second



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defendant is the only son of Mari and Avudaiyakonar. After the demise of his parents, the second defendant alone was in possession and enjoyment of the suit properties. The said Sokkayi never executed any sale deed in favour of Kaveriammal as claimed by the plaintiff. The said sale deed dated 07.05.1955 is a fabricated document. Neither the said Kaveri nor the plaintiff were in possession and enjoyment of the suit property. The description of property mentioned in the said sale deed is no way in connection with the suit properties. Since the grandmother of the plaintiff was not in possession and enjoyment of the suit properties, patta was issued in her favour. The plaintiff is attempting to grab the suit properties from the defendants by filing the above vexatious suit.

7. During the pendency of the suit, the defendants have come out with the applications for reopening the case and to recall D.W1 for marking a sale deed dated 10.03.1927 said to have been executed by Sokkayi, W/o.Malayakonar to prove the sale deed dated 07.05.1955 marked as Ex.P1 as a forged document. According to the revision petitioners, the said sale deed dated 10.03.1927 is a vital document to establish the fact that the thumb



impression found in Ex.P1 do not belong to Sokkayi. However, the trial Court dismissed the above applications stating that as per Sections 68 and 90 of the Indian Evidence Act, the said document cannot be admitted as evidence.

8. Though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

9. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any



ambiguity that may have arisen during the course of his examination.

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10. The rigour under Rule 17, however, does not affect the inherent powers of the court to pass the required orders for ends of justice to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh evidence. This power can also be exercised at any stage of the suit, even after closure of evidence. Thus, the inherent power is the only recourse, as held by the Hon'ble Supreme Court in K.K.Velusamy Vs N.Palanisamy, at paragraph-11, which reads as follows:

“11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked inappropriate cases to reopen the evidence and/or recall



witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.”

11. Moreover, Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is “right” and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process. The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of Court.

12. Therefore, the settled legal position under Order 18 Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders



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passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.

13. In the above discussions, the impugned orders dated 16.11.2022 made in I.A.Nos.456 of 2022 and 457 of 2022 in O.S.No.144 of 2013, on the file of the District Munsif Court, Aranthangi, are confirmed and the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

The District Munsif,
Aranthangi.

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order made in
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