

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NOS.1118 TO 1120 OF 2015
AND M.P.NO.1 OF 2015

G.Mohanasundaram

... Petitioner in all CRPs'

Vs.

1.Masjid E Mamoor Committee
Represented by President
Haji A.K.Abdul Haleem Sahib

2.Honorary Secretary
and Haji J.M. Iqbal Sahib
Both having its office at Door No.186,
Old No.166-168, Angappa Naicken Street,
Chennai - 600 001.

... Respondents in all CRPs'

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.01.2015 passed in I.A.Nos.15968 of 2014, 15969 of 2014 and 15970 of 2014 respectively, in O.S.No.2234 of 2012 by the XIII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.M.A.Lakshmiopathi

COMMON ORDER

These Civil Revision Petitions have been filed against the order dated 12.01.2015 passed in I.A.Nos.15968 of 2014, 15969 of 2014 and 15970 of 2014 respectively, in O.S.No.2234 of 2012, by the learned XIII Assistant Judge, City Civil Court, Chennai.

2.The plaintiff in O.S.No.2234 of 2012 is the petitioner in these Civil Revision Petitions. The suit was filed for permanent injunction restraining the defendants, their men, agents, subordinates or persons claiming under them from interfering with the plaintiff's peaceful possession and enjoyment of the schedule mentioned property.

3.After examination of witnesses on both sides, the petitioner filed applications to re-open, recall P.W.1 and for marking additional documents. The applications were resisted by the respondents by filing counter affidavit. The Trial Court dismissed those applications on 12.01.2015. Aggrieved by the same, the present Civil Revision Petitions are filed.

4.Mr.M.A.Lakshmipathi, learned counsel for the petitioner submitted that the plaintiff has filed the suit for bare injunction and the

respondents are the owners of the property in S.No.3614 and the plaintiff is the owner of the land in S.No.3614 and only to prove the fact, the petitioner has filed those applications.

5.The learned counsel for the petitioner has relied on para 12 of the judgment of the Honourable Supreme Court in **K.K.VELUSAMY VS. N.PALANISAMY [2011 (3) L.W. 738]** in support of his contention, wherein, it has been held as follows:

“12.The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in this regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

6. However, in para 8 of the same decision, it has been held as follows:

“8. Order 18, Rule 17 of the Code enables the Court, at any stage of a Suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit. The power to recall any witness under Order 18, Rule 17 can be exercised by the Court either on its own motion or on an Application filed by any of the parties to the Suit requesting the Court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify and doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. (Vide Vadiraj Nagappa Vernekar V. Sharadchandra Prabhakar Gogate, 2009 (4) SCC 410). Order 18, Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18, Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the Court itself can put questions and elicit answers. Once a witness is recalled

for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.”

7.The Supreme Court in its judgment in **VADIRAJ NAGGAPPA VERNEKAR (DEAD) THROUGH LRS VS.SHARADCHANDRA PRABHAKAR GOGATE [2009 (4) SCC 410]** has held as follows:

“25.In our view, 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.

26.As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. 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 herein above, 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.”

8. Similar is the view taken by the Supreme Court in its judgment in ***BAGAI CONSTRUCTION VS. GUPTA BUILDING MATERIAL STORE [2013 (1) MWN (CIVIL) 573 (SC)]***.

9. In the light of the judgments of the Supreme Court, the petitioner cannot be permitted to reopen and recall P.W.1, even for marking the documents, which were available with the petitioner, when P.W.1 has given evidence in this case. The Trial Court has rightly rejected the applications. Hence, I do not find any reason to interfere with the order of the Trial Court.

10. In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2015

Index : Yes/No
Internet : Yes/No
TK

To

The XIII Assistant Judge
City Civil Court
Chennai.

K.KALYANASUNDARAM, J.

TK

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