

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) NO.1279 OF 2015
AND M.P.NO.1 OF 2015

Rajeswari ... Petitioner

Vs.

Govindaraj ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the II Additional District Munsif Court at Kallakurichi, dated 15.09.2014 in I.A.No.958 of 2014 in O.S.No.367 of 2006.

For Petitioner : Mr.P.Valliappan
For Respondent : Mr.T.Balachandran

ORDER

This Civil Revision Petition is directed against the order dated 15.09.2014 passed in I.A.No.958 of 2014 in O.S.No.367 of 2006 by the learned II Additional District Munsif, Kallakuruchi.

2.The plaintiff in O.S.No.367 of 2006 on the file of the II Additional District Munsif, Kallakurichi is the revision petitioner.

3.The petitioner had instituted the suit against the respondent for declaration, mandatory injunction and for permanent injunction. At the instance of the petitioner, an Advocate Commissioner was appointed in I.A.No.1974 of 2006 and he has also filed his report along with plan on 20.04.2007. After the evidence of the plaintiff and the defendant was over, the suit was posted for arguments on 23.07.2010. At that juncture, the petitioner filed an application to reopen and recall P.W.3 to P.W.5 for further examination. The Trial Court has allowed the application.

4.After examination of the witnesses, the petitioner filed a petition in Transfer O.P.No.155 of 2010 for transfer the suit to some other Court and the transfer petition was dismissed. Thereafter, the petitioner filed an application in I.A.No.380 of 2013 under Order XXIII Rule 1 of the Civil Procedure Code seeking permission to withdraw the suit. The application was dismissed and the Civil Revision Petition filed in C.R.P.No.3913 of 2013 challenging the order was also dismissed by this Court.

5. Thereupon, the petitioner filed the present application for examination of the Advocate Commissioner and the same was dismissed holding that the case cannot be reopened to examine the Advocate Commissioner with regard to the contradictions in the report filed 7 years ago that too without filing objections to the report. Challenging the order, the present Revision Petition is filed.

6. It is settled law that the application to reopen and recall witnesses can be done only for clarifying any ambiguity in the evidence and the power cannot be utilised to fill up lacuna. At this juncture, it is useful to refer to the judgment of the Honourable Supreme Court in ***K.K.VELUSAMY VS. N.PALANISAMY [2011 (3) CTC 422]***, wherein 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 Hon'ble 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 case on hand, undisputedly the evidence of both parties was over and the suit was posted for arguments on 23.07.2010. After making attempts to protract the proceedings, the petitioner eventually filed the present petition on 05.06.2014. In the light of the judgments of the Supreme Court cited supra, I do not find any illegality or irregularity in the order impugned in this Civil Revision Petition.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, miscellaneous petition is closed.

30.03.2015

Index : Yes/No
Internet : Yes/No
VRC/TK

To

The II Additional District Munsif
Kallakuruchi.

K.KALYANASUNDARAM, J.

VRC/TK

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