

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15 – 04 – 2015

CORAM:

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

CRP (PD) Nos. 1434 and 1555 of 2015

and

M.P. No. 1 of 2015 in CRP (PD) No. 1434 of 2015

1. Kuppannan @ Kuppusamy
 2. Mariammal .. Petitioners in both CRPs.
- Vs.

Muthappa Nadar (Died)

1. Samiyathal
2. Subramani
3. Lakshmi
4. Dhanam
5. Santhi
6. Sundaram
7. Santhamani .. Respondents in both CRPs.

PRAYER: Petitions filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.12.2014 passed in I.A. Nos. 841 and 840 of 2012 respectively in O.S. No. 110 of 2008 on the file of the District Munsif, Kangeyam.

For Petitioners : Mr. N. Manokaran

COMMON ORDER

The plaintiffs in the suit O.S. No. 110 of 2008 have projected the instant Civil Revision Petitions seeking to set aside the common order dated 16.12.2014 passed by the District Munsif, Kangeyam, in I.A. Nos. 841 and 840 of 2012 respectively, wherein and by which the application moved by the plaintiffs under Order 6 Rule 17 CPC to amend the plaint and the application filed under Section 151 CPC to reopen the case respectively, were dismissed.

2. From the materials available on record, it is seen that earlier a suit in O.S. No. 206 of 2002 was filed by the second respondent / second defendant for partition in which an *ex parte* decree was passed on 12.08.2003 and the attempt by the petitioners herein to set aside the said *ex parte* decree was dismissed even at the stage of condonation of delay. While so, the petitioners herein filed O.S. No. 110 of 2008 on the file of District Munsif, Kangayam, seeking for the relief of declaration and permanent injunction. In the meanwhile, the petitioners, having failed in their attempt to challenge

the *ex parte* decree by way of setting aside the same or by preferring an appeal, filed an application to amend the plaint to declare the decree in O.S. No. 206 of 2002 as null and void and an abuse of process of law. For the said purpose, the petitioners also filed an application seeking to reopen the case when the matter is posted for arguments.

3. Heard the learned counsel appearing for the revision petitioners and perused the records.

4. The only question that has to be decided before this Court is whether there is any perversity or illegality in the common order passed by the learned District Munsif in I.A. Nos. 841 and 840 of 2012 in dismissing the applications to amend the plaint and to reopen the case respectively.

5. With regard to the interpretation under Order 18 Rule 17 CPC, it would be relevant to refer to the decision of the Hon'ble Supreme Court in ***Bagai Construction vs. Gupta Building***

Material Store [(2013) 14 SCC 1] wherein in paragraphs 9 to 11 of the judgment, it has been observed as follows:-

Para 9 : *“In Vadiraj Naggappa Vernekar vs. Sharadchandra Prabhakar Gogate, this Court had an occasion to consider similar claim, particularly, application filed under Order XVIII Rule 17 and held as under: (SCC pp. 414-15, paras 25, 28-29 & 31)*

“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.

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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 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.*

* * *

31. *Some of the principles akin to Order 47 CPC may be applied when a party makes an application under the provisions of Order 18 Rule 17 CPC, but it is ultimately within the court's discretion, if it deems fit, to allow such an application. In the present appeal, no such case has been made out.*

Para 10 : *If we apply the principles enunciated in the above case and the limitation as explained with regard to the application under Order XVIII Rule 17, the applications filed by the plaintiff have to be rejected. However, learned counsel for the respondent by placing heavy reliance on a subsequent decision, namely, **KK Velusamy vs. N. Palanisamy**, submitted that with the aid of Section 151 CPC, the plaintiff may be given an opportunity to*

put additional evidence and to recall PW-1 to prove those documents and if need arises other side may be compensated. According to him, since the High Court has adopted the said course, there is no need to interfere with the same.

Para 11 : *In Velusamy (supra) even after considering the principles laid down in Vadiraj Naggappa Vernekar (supra) and taking note of Section 151 CPC, this Court concluded that: (K.K. Velusamy case, SCC p. 286, para 22)*

“22. ... in the interests of justice and to prevent abuse of the process of the Court, the trial Court is free to consider whether it was necessary to reopen the evidence and if so, in what manner and to what extent....”

6. The proposition laid down in the decision cited supra, is that Order 18 Rule 17 cannot be used for filling up the omissions in the evidence adduced already. The power under Order 18 Rule 17 CPC is given to the Court to invoke it *suo motu* or at the instance of the parties. However, the same should be used sparingly in appropriate case and it cannot be exercised in a routine manner especially after the case is posted for arguments at a belated stage of the suit.

7. Besides, in the instant case, the suit relief is also clearly barred by limitation. It is well settled that the power under Order 18 Rule 17 of CPC is not intended to be used routinely but the application should be *bona fide* and the purpose for which the case is reopened will assist in rendering justice. The said provision only enables the Court to reopen a case. The power is discretionary and should be used sparingly in appropriate cases. The said power cannot be used to fill omissions by the parties. In such circumstances the dismissal of the application to amend the plaint by the learned District Munsif is correct and does not warrant any interference.

8. Even as regards reopening the case, it is well settled principle that reopening of case cannot be allowed for the sake of mere asking. Such relief should be exercised by the Courts sparingly. As such, the order of the learned District Munsif, Kangeyam, dismissing the petition to reopen the case, in the opinion of this Court, does not suffer from any infirmity and hence, the same requires no interference.

In view of the above discussion and the settled legal position, the Civil Revision Petitions are dismissed confirming the impugned common order dated 16.12.2014 passed in I.A. Nos. 841 and 840 of 2012 respectively in O.S. No. 110 of 2008 but without costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Website : Yes / No

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PUSHPA SATHYANARAYANA, J.

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