

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4435 of 2015

and

M.P.No.1 of 2015

Samunthi

W/o.Tiruppathi Gounder

.. Petitioner/Petitioner/5th Defendant

Vs.

1.Saroja

.. 1st Respondent/2nd Respondent/Plaintiff

2.Kulanthaiammal

3.N.Krishnan

4.S.Selvaraj

5.Boopathy

6.Indhumathi @ Bhuvaneshwari

.. Respondents 2 to 6/Respondents 3 to 7/
Defendants 2 to 4 and 6 & 7

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.10.2015 made in I.A.No.1154 of 2015 in O.S.No.273 of 2007 on the file of the Principal District Munsif at Tiruppattur.

For Petitioner : Mr.S.Subbiah

ORDER

The present Civil Revision Petition has been filed challenging the impugned order dated 06.10.2015 made in I.A.No.1154 of 2015 in O.S.No.273 of 2007, wherein the application filed to recall P.W.1 came to be dismissed.

2. The learned counsel appearing for the revision petitioner would submit that the revision petitioner who is the 5th defendant has filed the application in I.A.No.1154 of 2015 to recall P.W.1 in order to cross-examine the witness stating that he has to putforth some questions to P.W.1 which were omitted while P.W.1 was in the witness box. However, the said application came to be dismissed by the Trial Court against which the present Civil Revision Petition has been preferred.

3. The 1st respondent/plaintiff who is one of the daughter of one Govinda Gounder has filed the suit for partition and separate possession of 1/3 share in the suit property along with the first and

second defendants. The revision petitioner herein is the grand daughter of the said Govinda Gounder. Admittedly, the evidence on the side of the plaintiff was over and on the side of the defendant, D.W.1 to D.W.4 were examined. At this juncture, the present application has been filed to recall P.W.1 to putforth the questions which were omitted while P.W.1 was in the witness box. It is also admitted by the learned counsel for the petitioner that the 5th defendant was not so far examined before the Court.

4. In these circumstances, if really the revision petitioner/5th defendant wanted to mark certain document, he may very well file the same when he appears before the Court. However, instead of doing so, the revision petitioner has filed the application in I.A.No.1154 of 2015 to recall P.W.1 to putforth the questions which were omitted while P.W.1 was in the witness box.

5. In the decision of the Hon'ble Apex Court reported in **(2013) 3 MLJ 185 (SC), Bagai Construction v. Gupta Building Material Store**, it was held that the power to recall any witness under Order 18 Rule 17 can be exercised by this Court either on its own motion or on an application filed by any of the parties to the suit. However, 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. It is appropriate to incorporate the relevant portion in paragraph 8 of the said judgment:

"8) In Vadiraj Naggappa Vernekar (dead) through LR. vs. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410, this Court had an occasion to consider similar claim, particularly, application filed under Order XVIII Rule 17 and held as under:

"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.

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."

So, I am of the view that the Trial Court has considered the matter in proper perspective and I do not find any reason to interfere with the order of the Trial Court.

6. In fine, the Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

24.11.2015

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To

The learned Principal District Munsif
Tiruppattur

R.MALA, J.

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