

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.4486 and 4487 of 2015
and
M.P. No.1 of 2015

1.Maragatham
2.P.Lakshmi

.. Petitioners/Plaintiffs
in both CRPs.

Vs.

P.Karuppakkal (died)

1.P.Najukutti
2.P.Palanisamy
3.Rukmani
4.P.Subbathal
5.P.Mani
6.Vasanthamani
7.Kalaivani
8.Mohankumar

.. Respondents/Defendants
in both CRPs.

Prayer:-Civil Revision Petitions are filed under Article 227 of Constitution of India, against the fair and decreetal order dated 02.07.2015 made in I.A.Nos.551 & 552 of 2014 in O.S.No.593 of 2010 on the file of III Additional District and Sessions Court, Coimbatore, Coimbatore District.

For Petitioner :Ms.P.T.Asha for
M/S.Sarvabhauman Associates

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decreetal order dated 02.07.2015 made in I.A.Nos.551 & 552 of 2014 in O.S.No.593 of 2010 on the file of III Additional District and Sessions Court, Coimbatore, Coimbatore District.

2.At the time of admission, argument of the learned counsel for the revision petitioners is heard in length.

3.The revision petitioners herein as the plaintiffs filed a suit in O.S.No.593 of 2010 for the following reliefs:

"a. Declaring the document No.2202/1983 registered before the Gandhipuram Registrar Office is not binding upon the plaintiffs and direct legal heirs of deceased Peria Gounder;

b. For the partition of the suit property into 7 equal shares with reference to good and bad soil by metes and bounds to allot two shares to the plaintiffs and five shares to the defendants 2 to 6 equally;

c. Granting permanent injunction in restraining the defendants 2 to

9 from encumbering or alienating the suit mentioned properties till the passing of final decree in respect of the suit properties.

d. Directing the defendants to pay the cost of the suit;”

4.The plaintiffs filed the suit against their mother, sisters and brothers. The second and third defendants have filed a detailed written statement and contesting the suit. Admittedly, issues were framed and both sides oral evidence have been let in. When the matter was posted for arguments, the revision petitioners/plaintiffs have come forward with the applications in I.A.Nos.551 and 552 of 2014 for reopen and recall P.W.1. The trial Court, after hearing both sides, dismissed the applications, against which, the present revision petitions have been preferred by the revision petitioners/plaintiffs.

5.Learned counsel for the revision petitioners submits that the respondents/defendants filed a counter as if the revision petitioners have filed an application for recall D.W.1 not P.W.1. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision petitions.

6.The revision petitioners/plaintiffs filed the suit for setting aside the partition deed and also for partition and separate possession. In the plaint pleadings, it was specifically stated that the suit property was originally belonging to Periya Gounder, who died on 29.12.1994 leaving behind the first defendant as wife, defendants 2 to 6 and the plaintiffs as his sons and daughters. Defendants 7 to 9 are the son and daughters of the second defendant. During the lifetime of Periya Gounder, partition deed was alleged to be executed to defraud the creditors. But the father Periya Gounder died in the year 1994 and the suit was filed in the year 2010 for setting aside the partition deed.

7.Now the point to be decided is that whether the applications filed by the revision petitioners/plaintiffs are liable to be allowed? On perusal of the affidavit filed by the revision petitioners/plaintiffs, it reveals that the plaintiffs have not assigned any reason as to why P.W.1 to be recalled. In such circumstances, those applications themselves are bereft of material particulars. In para-3 of the affidavit filed in support of I.A.No.551 of 2014, the plaintiffs have stated that "We have examined the second petitioner

as P.W.1. We want to put for certain legal and factual issues by way of oral evidence”.

8.It is well settled proposition of law that the application under Order XVIII Rule 17 of C.P.C. for recall of a witness cannot be allowed for the purpose of filling up lacuna.

9.Furthermore, as per the decision of the Apex Court reported in **2013 (14) SCC 1 (Bagai Construction through its Proprietor Lalit Bagai v. Gupta Building Material Store)**, no person will be permitted to file an application to fill up the lacunas in the evidence let in by him. Merely because the respondents/defendants in their counter stated that there is no necessity for recall D.W.1, it is not a reason for allowing the applications. So I am of the view, there is no reason for reopen and recall P.W.1. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. So the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petitions deserve to be dismissed and they are hereby dismissed.

10. In the result, the Civil Revision Petitions stand dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

01.12.2015

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Index: Yes/No

To

III Additional District and Sessions Court
Coimbatore, Coimbatore District.

R.MALA,J.

Kj

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