

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALAYANASUNDARAM**

CRP.PD.Nos.638 & 639 of 2015

and

M.P.No.1 of 2015

1. Sivalingam
2. Santha
3. Kadhivel
4. Ravi
5. Mayil

... Petitioners in both the Revisions
Vs.

1. Mangai alias Mangammal
 2. Govindasamy
- Revisions

... Respondents in both the

COMMON PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the orders of the learned District Munsif of Krishnagiri, dated 03.12.2014 in I.A.No. 51 and 52 of 2014 respectively in O.S.No.289 of 2011.

For Petitioners in both the Revisions : M/s. V. Nicholas

COMMON ORDER

The defendants 2 to 5 in O.S.No.289 of 2011 on the file of the learned District Munsif, Krishnagiri are the petitioners in this revision. The respondents have instituted the suit against the petitioners for declaration of title and for permanent injunction.

2. In the suit, the respondents have filed applications in I.A.Nos.51 and 52 of 2014 to reopen the suit and to recall DW2 for further examination. The respondent, in the affidavit filed in support of the application, has averred that the second defendant was examined as DW1 and some more questions have to be asked about the important documents and for clarifying the ambiguity, the examination of DW1 is necessary. The applications were opposed by the petitioners by filing counter. Despite the objections, the Trial Court allowed the application. Aggrieved by the order, the present revision petitions have been filed.

3. Sri. V.Nicholas, learned counsel for the petitioners submitted that in exercise of its jurisdiction with material irregularity, the Trial Court had allowed the petitions filed by the plaintiff for reopen and recall DW1. It is further contended that DW1 was cross examined elaborately by the plaintiff and DW2, the Village Administrative Officer was also cross-examined elaborately and the evidence of both sides were closed, the petition was filed thereafter to reopen the case on the ground that certain questions were omitted to be put to DW1. It is further contended that only with a view to fill up the lacuna, in the case of the plaintiff, the applications were filed. The Learned Counsel has relied upon the following Judgments

(2009) 4 SCC 410 and 2011 3 CTC 422.

4. In the case of **Vadiraj Naggappa Vernekar (Dead) Through LRs Vs. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410**, the Hon'ble Supreme Court 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 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.*

5. In the case of **K.K. Velusamy Vs. N. Palanisamy** reported in **(2011 (3) CTC 422)** the Hon'ble Apex Court has 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 any 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 Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, 2009 (4) SC 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 recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

6. It is seen that the respondent had instituted the suit against the petitioners for declaration for title and for permanent injunction. The Trial Court having observed that the burden of proof is on the plaintiff and he should be given opportunity to establish her case, allowed the applications. The specific case of the respondent is that there are some ambiguities in the evidence of DW1 and only to clarify the position, the applications were filed. In the decisions

relied on by the counsel for the petitioner, the Hon'ble Supreme Court has observed that to clear any ambiguity witnesses can be re-examined.

7. In view of my findings, I do not find any reasons to interfere with the orders impugned in these Revisions.

In the result, the revision petitions are dismissed. Consequently, connected miscellaneous petition is closed. No costs.

18.02.2015

gv
Index :Yes/No
Internet: Yes/No

To

The District Munsif of Krishnagiri.

K.KALAYANASUNDARAM,J.

Gv

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