

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.2840 of 2013
and M.P.No.1 of 2013

R.Dhandapani

... Petitioner

Vs.

1.R.Sivaramakrishnan
2.K.Soundaravalli
3.V.Muthulakshmi
4.A.Visalakshi
5.R.Easwaramurthy
6.Periyasamy Gounder
7.E.Venkatachalam
8.E.Kalyanasundaram
9.R.Ramajayam
10.K.M.Murugesan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 19.06.2013 made in I.A.No.602 of 2013 in O.S.No.392 of 2006 on the file of the I Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.T.P.Manoharan

For Respondents : Mr.A.P.Srinivas (R1 & R2)

Mr.A.Thiagarajan (R4 & R5)

Mr.S.K.Rakhunathan (R7 & R8)

R3, R4, R6 & R10 - notice dispensed with

ORDER

Challenging the fair and decreetal order made in I.A.No.602 of 2013 in O.S.No.392 of 2006 on the file of the I Additional District and Sessions Judge, Tiruppur, the plaintiff has filed the above Civil Revision Petition.

2.The plaintiff has filed the suit in O.S.No.392 of 2006 for partition. The defendants filed their written statement and are contesting the suit. When the suit was taken up for trial, the attestor of Ex.A2 Will dated 16.07.1991 was examined as P.W.2. Thereafter, P.W.3 was examined and after the completion of oral evidence on the side of the plaintiff, the plaintiff took out an application in I.A.No.602 of 2013 under Order 18 Rule 17 of the Civil Procedure Code to re-call P.W.2 for further examination stating that certain vital particulars were not elicited from the said witness. The said application was opposed by the 5th defendant. The trial Court dismissed the application finding that the provisions of Order 18 Rule 17 of the Civil Procedure Code is available only to the Court and that the parties cannot invoke the said provisions. Further, the trial Court observed that if the application is allowed that will enable the plaintiff to fill up the lacuna.

3.It is settled position that an application under Order 18 Rule 17 of the Civil Procedure Code is also available to the parties. It is also settled

position that an application under Order 18 Rule 17 of the Civil Procedure Code cannot be filed by a party to fill up the lacuna in the evidence of the witness, which has already been recorded. However, in order to clear any ambiguity that may have arisen during the course of his examination, a witness can be re-called for further examination. The finding of the trial Court that the provisions of Order 18 Rule 17 of the Civil Procedure Code is applicable only to the Court and not to the parties cannot stand and is liable to be set aside. Accordingly, the same is set aside.

4. In order to prove the Will, the attestor was examined as P.W.2 on the side of the plaintiff. In the affidavit, the plaintiff has stated that certain vital particulars were not elicited from the said witness, therefore, he sought to further examine P.W.2. Further, I am of the view that the present application has been filed immediately after the completion of the evidence of P.W.3. Therefore, it cannot be said that the petition has been filed at a belated stage. No doubt, the suit is pending from the year 2006 and is yet to be disposed of by the trial Court. As already stated, a witness can be re-called to clear any ambiguity that may have arisen during the course of his examination and not to fill up the lacuna in his evidence.

5. In these circumstances, in the interest of justice, I am of the considered view that an opportunity can be given to the plaintiff to further examine P.W.2 with regard to the due execution of the Will. It is made clear that by re-calling P.W.2, the plaintiff shall not use this opportunity to fill up the lacuna and the witness is re-called only to clear any ambiguity that may have arisen during the course of his examination.

6. With this observation, the fair and decreetal order passed in I.A.No.602 of 2013 in O.S.No.392 of 2006 is set aside. The Civil Revision Petition is allowed.

7. It is made clear that the plaintiff should complete the examination of P.W.2 within four weeks from the date of receipt of a copy of this order. Since the suit is pending from the year 2006, I direct the I Additional District and Sessions Judge, Tiruppur to dispose of the suit in O.S.No.392 of 2006, on merits and in accordance with law, within two months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

11.06.2015

Note: Issue order copy by 16.06.2015.

To

The I Additional District and Sessions Judge,
Tiruppur.

M.DURAIWAMY,J.
va

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