



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 5/1/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD)Nos.2744 to 2746 of 2014

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Ramasamy @ Anantharaman ... Petitioner in all the petitions.

Vs

1. Padmavathi
rep. by her Power Agent
Lenin S/o.Ramasamy
Pudukottai District.
2. Selvaram Gandhi
3. Ramasamy
4. Gowsalya
5. Ezhuvakkal
6. Ravichandran
7. Kumarasamy
8. Abdul Samadu
9. Azhagu
10. Annamalal Madam ... Respondents in all the petitions.

Petitions filed under Article 227 of the Constitution of India praying to set aside the fair order and decreetal order passed in I.A.No.168, 169, 170 of 2014 in O.S.No.48 of 2012 dated 4/12/2014 on the file of the Principal District Court, Ramanathapuram.

For petitioner ... Mr.S.Meenakshisundaram

For Respondent ... Mr.N.Balakrishnan

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COMMON ORDER

These Civil Revision Petitions have been filed against the common order passed by the Principal District Judge, Ramanathapuram, refusing to reopen, recall and receive the documents and let in further evidence.

2. The seventh defendant in the suit is the petitioner herein. The suit is filed in the year 2007 for the relief of partition. The case of the petitioner was that only during the course of trial, they could take steps to summon the Patta Distribution List of village and resurvey and Resettlement Register with respect to the suit properties. The same could be obtained by him only very recently as the documents were not available with him when the witnesses were in the box. He had filed these applications to reopen the case and recall the petitioner/D.W.2 and D.W.1 and mark the documents.

3. The respondent, who is the plaintiff vehemently opposed for allowing the above applications mainly contending that it was only an exercise of procrastination. According to the plaintiff/first respondent, the petitioner had been deliberately delaying and protracting the proceedings. In fact, earlier, he had filed several applications including the application to receive the documents. However, for the



reasons best known, the documents were not marked.

4. It was also brought to the knowledge of this Court that several times this Court had fixed the date for disposal of the suit itself. However, there seems to be no progress. The petitioner/seventh defendant contended that being the suit for partition and the documents sought to be marked being public documents viz., the Patta Distribution List and Resurvey and Resettlement register would be useful in adjudicating the matter in its proper perspective and that they should be received in evidence. It was also contended that no serious prejudice would be caused to the respondents, if the above said documents are marked.

5. It was submitted by the learned counsel appearing for the petitioner that under Order 18 Rule 17 of C.P.C., it is open to the Court to recall any witness at any stage of the suit and the said power can be exercised either by the Courts *suo motu* or on an application filed by any of the parties to the suit, requesting the Court to exercise the said power.

6. No doubt, the said power is discretionary and the same should be used only sparingly in appropriate cases to enable the Court to clarify the doubts and not to fill up any omissions in the evidence of a witness who had already been examined.

7. The learned counsel appearing for the petitioner placing reliance on the decision of the Supreme Court reported in {2011 (3) CTC 422} K.K.VELUSAMY Vs. N. PALANISAMY, in support of his contention.

"We may add a word of caution. The power under Section 151 or Order 18, Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the Application is found to be bona fide and where the additional evidence, oral or documentary, will assist the Court to clarify the evidence on the issues and will assist in rendering justice, and the Court is satisfied that non-production earlier was for valid and sufficient reasons, the Court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The Court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the Court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the Application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the Application is allowed and the evidence is permitted and ultimately the Court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if



the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the Application is merely to protract the proceedings, the Court should reject the Application. If the evidence sought to be produced is an electronic record, the Court may also listen to the recording before granting or rejecting the Application."

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8. The learned counsel for the respondents contended that it was only the delaying tactics by the petitioner/seventh defendant and that the plaintiff is more than 90 years old and that she should know the fate of the suit during her life time and prayed for a time frame to be fixed for the disposal of the suit.

9. The learned counsel also placed reliance on the decision reported in {2013 (14) SCC - 1} BAGAI CONSTRUCTION THR. ITS PROPRIETOR Mr.LALIT BAGAI Vs. GUPTA BUILDING MATERIAL STORE. The above said case is not strictly applicable to the present set of facts. As in the above case, final arguments were heard and judgment was reserved. Only thereafter, to improve the case, the plaintiff had come forward with the application under Order 18 Rule 17 of the Code.

10. Considering the facts narrated above and the respective contentions of the counsels, this Court feels that the case may be reopened and the petitioner can be recalled and the documents may be marked through him.

11. The learned counsel for the petitioner also fairly conceded that any one day that may be fixed for the said purpose would be sufficient to complete the exercise. Therefore, the parties are directed to appear before the Principal District Judge, Ramanathapuram on 19/1/2015 and complete the marking of the documents. The Principal District Judge is also directed to dispose of the suit on or before 31st January 2015 and report compliance to this Court.

12. In the result, these Civil Revision Petitions are allowed as indicated above. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

\\True copy\\

Sub Assistant Registrar

To

The Principal District Judge, Ramanathapuram.

+1 CC TO M/S.N.BALAKRISHNAN, ADVOCATE SR.NO.283

+1 CC TO M/S.N.MEENAKSHI SUNDARAM, ADVOCATE SR.NO.111

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MVS

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