



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .Nos.569 to 571 of 2015 (PD)

and

M.P. (MD) .No.1 of 2015

in

C.R.P. (MD) .No.569 of 2015

Rajeswari

... Revision Petitioner in all C.R.Ps/Petitioner/
Plaintiff

vs.

1.Kasthuri

2.Peria Nadar

3.Madhu

... Respondents in all C.R.Ps/Respondent/
Defendant

COMMOM PRAYER: The Civil Revision Petitions filed under Article 227 of the Constitution of India, to call for the records and set aside the order dated 02.12.2014 passed in I.A.Nos.500, 501 and 502 of 2014 in O.S.No.249 of 2010 on the file of the Court of Additional District Munsif, Eraniel and allow the petition.

For Petitioners

in all C.R.Ps : Mr.J.John Jayakumar

COMMON ORDER

The plaintiff in a suit for permanent injunction has filed I.A.Nos.500, 501 and 502 of 2014 in O.S.No.249 of 2010 on the file of the Additional District Munsif, Eraniel for re-open, recall P.W.1 and to receive the documents respectively.

2.In the affidavit filed in support of these applications, the plaintiff has stated that the evidence was over in the year 2013 and it was posted for arguments on 05.01.2014. When the plaintiff's advocate was going through the records and noticed certain documents have not been marked. Therefore, to mark those documents he wanted to re-open the case and to recall P.W.1 and to mark two documents, one is settlement deed and another one is encumbrance certificate.

<https://hcservices.equity.gov.in/hcservices> 3. It is in the case of the plaintiff that these documents were not available during the course of the trial and that they could not be marked.



4. It is settled principle that Order 18 Rule 17 of C.P.C., cannot be invoked for the purpose of filling up of the gap and the said application also cannot be allowed for the sake of asking. It has been settled by the Supreme Court in the decision in AIR 2013 SUPREME COURT 1849, M/S.BAGAI CONSTRUCTION THR.ITS PROPRIETOR LALIT BAGAI V. M/S.GUPTA BUILDING MATERIAL STORE, in which the relevant paragraphs are extracted hereunder:

"11. It is further seen that during the entire trial, those documents have remained in exclusive possessions of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstances, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial.

12. After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that Courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151, CPC."



5. In view of the above settled principle, there is no merit in the order passed by the trial Court, as the applications are filed after the case is posted for arguments.

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

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To
The Additional District Munsif Court,
Eraniel.

Copy to:

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai

+1cc to Mr. J. John Jayakumar, Advocate Sr.No.14294
ns
AA/13.04.2015/3p- 4c/

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