

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **01.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) Nos.2906 and 2907 of 2016 and
C.M.P.Nos.14782 and 14783 of 2016

1.V.Rani
2.J.Hemalatha
3.K.Chitra Devi
4.V.Karthikeyan
5.V.Sivasankaramoorthy
6.M.Jawagar

...Petitioners in both CRPs

versus

S.K.Srinivasan

...Respondent in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and final order passed in I.A.Nos.164 and 165 of 2016 in O.S.No.284 of 2004 respectively on the file of III Additional District Court, Salem, dated 07.06.2016.

For Petitioner : Mr.A.Sundaravadhanan
For Respondent : Mr.T.R.Rajaraman

COMMON ORDER

These two revision petitions are directed against the order dated 07.06.2016 dismissing the applications filed by the petitioners to re-open the case and for further examination of D.W.1, primarily for the purpose of marking documents produced belatedly.

2. The respondent filed a suit in O.S.No.284 of 2014 for declaration and delivery of possession of the suit property. The suit was opposed by the

petitioners by filing written statement. The petitioners, after cross examination of D.W.2 filed two applications in I.A.Nos.164 and 165 of 2016. The applications were filed to reopen the evidence of D.W.1 for further examination and marking certain documents. The learned Trial Judge dismissed the applications primarily for the reason that those documents were available with the petitioners, even when D.W.1 was cross examined. The learned Trial Judge further held that sufficient reasons were not given in the affidavits filed in support of the interlocutory applications.

3. The learned counsel for the petitioners contended that the Trial Court passed an order to take up the suit in O.S.No.284 of 2004 along with two other suits filed by the petitioners. Since the suit in O.S.No.284 of 2004 was the lead suit, evidence was taken by the respondent at the first instance. According to the learned counsel, the petitioners were denied of an opportunity to mark the documents, notwithstanding the fact that they are the plaintiffs in the other two suits.

4. The learned counsel for the respondent by placing reliance on the judgment of the Supreme Court in **Bagai Construction Through its Proprietor Lalit Bagai v. Gupta Building Material Store [(2013) 14 SCC 1]** and the recent judgment in **Ram Rati v. Mange Ram (d) Through Lrs. and others [2016 SCC Online SC 249]**, contended that the application to recall the witness was filed during the fag end of the trial along

with an application to receive the documents. According to the learned counsel, the documents were in the possession of the petitioners even when D.Ws.1 and 2 were examined. The petitioners have not given any reason, much less, justifiable reason to allow the applications to recall D.W.1 and to receive the documents. The Trial Court was therefore perfectly correct in dismissing the applications.

5. The petitioners filed a suit in O.S.No.69 of 1996, which was subsequently re-numbered as O.S.No.256 of 1999. The second defendant in O.S.No.284 of 2004 filed a suit in O.S.No.343 of 1998 before the learned Subordinate Judge, Sankari for declaration. The Trial Court passed an order directing joint trial of all the three suits between the parties. Since the suit in O.S.No.284 of 2004 was the lead suit, evidence of the respondent was taken at the first instance. The petitioners, notwithstanding the fact that they are the plaintiffs in the other two suits adduced evidence as defendants in O.S.No.284 of 2004.

6. The petitioners filed two interlocutory applications to recall D.W.1 and to receive documents after the examination of D.W.2. The petitioners produced as many as 21 documents along with the application in I.A.No.165 of 2016.

7. The petitioners in the affidavits filed in support of the interlocutory applications simply stated that the originals of the documents were with one of the partners and the xerox copies were in the custody of another partner. According to the deponent, in order to avoid multiplicity of proceedings and to illustrate the case in a proper manner, the applications deserve to be allowed.

8. The learned Trial Judge dismissed the applications primarily on the ground that satisfactory reasons were not given by the petitioners.

9. The Supreme Court in **Ram Rati's** case (cited supra) while opining that the power under Order XVIII Rule 17 of the Code of Civil Procedure, cannot be invoked to fill up omission in the evidence already led by a witness, further observed that it is open to the Court to reopen the evidence for the purpose of further examination or cross- examination or even for production of fresh evidence. The Supreme Court held that the power can be exercised at any stage of the suit, even after the closure of evidence.

10. The petitioners have produced string of documents to prove their case. It is true that documents were available with them even when D.W.1 was examined. The petitioners failed to indicate any reason justifying the non-production of documents earlier or the necessity to recall D.W.1 for further examination.

11. After considering the materials on record and hearing the parties at length, I am of the view that the petitioners should be given opportunity to file a better affidavit in support of their plea in I.A.Nos.164 and 165 of 2016. Such a course would enable the Trial Court to appreciate the reasons for the non-production of documents earlier and the need to recall D.W.1 for further examination. It is more so on account of the fact that the petitioners are the plaintiffs in the other two suits. But for the joint trial, they would have been able to produce the documents before the Trial Court along with the chief affidavit of their witnesses. The petitioners should not be denied of an opportunity to project their case solely on account of the order passed by the Trial Court for joint trial and commencement of evidence on the side of the respondent at the first instance. I am therefore of the view that the matter requires fresh consideration by the learned Trial Judge.

12. In the result, the impugned orders dated 07.06.2016 in I.A.Nos.164 and 165 of 2016 are set aside. The applications are remitted to the Trial Court for fresh consideration. The petitioners are given time till 21.11.2016 to file a better affidavit in support of their plea in I.A.Nos.164 and 165 of 2016. The learned Trial Judge is directed to dispose of the applications as expeditiously as possible after giving an opportunity to the respondent to file counter.

K.K.SASIDHARAN, J.

(svki)

13. The Civil Revision Petitions are allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

01.11.2016

Index:Yes/No
svki

To

The III Additional District Court, Salem

For orders in

C.R.P.(P.D.) Nos.2906 and 2907 of 2016