

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.11.2016

Delivered on: 18.11.2016

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THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)Nos.2282 and 2283 of 2013 &
M.P.No.1 of 2013

1. Chellamuthu
2. Senthilkumar

.... Petitioners in both
Petitions

vs

1. Angammal
2. Chinnammal

.... Respondents in both
Petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order of the learned I Additional Subordinate Judge, Erode, dated 13.3.2013 made in I.A.Nos.41 and 42 of 2013 in O.S.No.98 of 2005.

For petitioners : Mr.D.Balachandran

For respondents : Mr.T.Murugamanikkam

COMMON ORDER

The present revision petitions have been filed against the orders, dated 13.3.2013 passed by the trial Court in I.A.Nos.41 and 42 of 2013 in O.S.No.98 of 2005, dismissing the interlocutory applications

filed by the petitioners herein, seeking to reopen the plaintiffs' side evidence for further cross-examination of PW.3.

2. The petitioners herein are the defendants in the suit in O.S.No.98 of 2005 on the file of the I Additional Sub Court, Erode. The said suit was filed by the respondents herein, praying for declaration, to declare that the decree passed in O.S.No.311 of 1998 on the file of the Sub Court, Erode is void and not binding on the plaintiffs and for consequential injunction, restraining the defendants from alienating or encumbering the suit properties.

3. After commencement of the trial in the suit, witnesses on either side were examined. The evidence on the side of the plaintiffs was closed on cross-examination of PW.3 in detail on 21.11.20006. Thereafter, the evidence of defendants side was closed on 24.8.2012. After six years, the petitioners/defendants moved the present interlocutory application in I.A.No.41 of 2013 under Section 151 CPC, seeking to reopen the plaintiffs' side evidence for further cross-examination of PW.3 and also another interlocutory application in I.A.No.42 of 2013 as a consequence of I.A.No.41 of 2013 for recalling PW.3 for further cross-examination on their behalf. Both the

applications were taken up together for final hearing by the trial Court.

4. In support of the applications, the only reason that was given by the petitioners/defendants was thus, certain questions were omitted to be asked to PW.3 and those questions were vital for adjudication of the suit and hence, the situation necessitated filing of the interlocutory applications for reopening and recalling PW.3 for further cross-examination.

5. Of course, the affidavit filed in support of the applications, did not specifically say as to why the so-called questions were omitted to be asked and why it has taken more than six years for the petitioners/defendants to come up with subject interlocutory applications.

6. Resisting the claim, the respondents/plaintiffs filed their counter statements, wherein, it was contended that the re-opening of the witness after a period of six years cannot be countenanced both in law and on facts. If such practice is encouraged, there will not be end to the examination of the witnesses and as such, recall of PW.3 cannot be ordered as a matter of routine in order to help the petitioners/defendants to fill up lacuna in the evidence and such request at the far end of the trial when the case was posted for arguments, was highly improper and impermissible.

7. Taking note of the submissions made on behalf of the parties, the trial Court, the trial Court eventually found that there was no merit in the interlocutory applications and dismissed the same.

8. The trial Court has given elaborate reasons as to why the interlocutory applications could not be ordered in favour of the petitioners/defendants. While deciding the issue, the trial Court has also relied upon the decision cited on behalf of the respondents reported in 2012 (2) MWN (Civil) 684 (***K.K.Velusamy versus N.Palanisamy***) in which, it was held that recalling of witnesses is a discretionary power to be exercised sparingly and it should not be used to fill up omissions. More over, PW.3 was the Secretary of the Primary Agricultural C-operative Bank, Kulur and he was not a party to the suit. In fact, the conduct of the petitioners/defendants was also found unsatisfactory in view of the fact that already, a similar petition was filed for reopening and recalling of DW.1 for further chief examination and the same was, however, allowed. Therefore, it is needless to mention that the petitioners/defendants cannot at their whims and fancies examine and cross-examine the witnesses at their own chosen time. In these circumstances, the trial Court dismissed the interlocutory applications as devoid of merits. Aggrieved by the same,

the petitioners are before this Court.

9. The learned counsel for the petitioners has reiterated the submissions as narrated above. The learned counsel for the respondents/plaintiffs has emphasized the law laid down by the Hon'ble Supreme Court reported in the decision cited supra before the trial Court.

10. In the light of the above discussion, this Court is of the view that the orders passed by the trial Court in dismissing the interlocutory applications do not suffer from any infirmity in order to interfere with the same.

Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected MP is closed. However, taking note of the fact that the suit is of the year 2005, the trial Court is directed to dispose of the suit within three months from the date of receipt of a copy of this order.

Internet: yes/no
Index: Yes/no

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Pre delivery Order in
CRP PD Nos.2282
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