



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2016

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) Nos.2485 and 2486 of 2016
and
C.M.P. (MD) No.11710 of 2016

Veeraiah

.. Petitioner/20th Defendant
in both petitions

Vs.

Kamayee Ammal (Died)
Veluchamy Pillai (Died)

1. Natrajan
2. Manickam

.. Respondents/Plaintiffs
in both petitions

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order and decree dated 05.11.2016 made in I.A. Nos.932 and 930 of 2016 in O.S.No.350 of 2006 on the file of the learned Principal District Munsif, Dindigul and to allow the above said Civil Revision petitions.

For Petitioner : Mr.G.Gomathi Sankar
For R-1 : Mr.M.Saravanan

C O M M O N O R D E R

These Civil Revision petitions are filed challenging the order passed by the learned District Munsif, Dindigul, in I.A. Nos.930 and 932 of 2016 in O.S.No.350 of 2006, dated 05.11.2016, dismissing the applications filed to reopen the case and to recall the witness P.W.1 examined on behalf of the respondents/plaintiffs.

2. It is not in dispute that the suit was filed in the year 1986 for partition and this Court had earlier directed the lower Court to dispose of the suit on or before 30.11.2016. However, the Revision petitioner has filed applications in I.A. Nos.932 and 930 of 2016 to reopen the case and to recall the witness of P.W.1,

who was examined on behalf of the respondents/plaintiffs.

3. It is also not in dispute that the Revision petitioner had filed an application earlier, for the very same purpose and the Court gave an opportunity to the petitioner, ordering for reopening the case and to recall the witness of P.W.1. For the same purpose, again the present applications have been filed by the Revision petitioner stating that some important questions have to be put to P.W.1. The lower Court dismissed the applications on the ground that the said applications were filed only to drag on the proceedings and not for any *bonafide* purpose. Since the earlier application had already been allowed and an opportunity was given to the petitioner, taking into account the pendency of the suit for more than thirty years and the direction issued by this Court for early disposal of the suit, the said applications were dismissed.

4. Aggrieved by the same, these Revision petitions have been filed challenging the order of the Lower Court only on the ground that the petition to recall the witness can be allowed at any stage of the suit. The learned counsel for the petitioner relied on the Judgment of the Hon'ble Supreme Court reported in **2016 (5) CTC 555, in the case of Ram Rati V. Mange Ram (D) through L.Rs.**, wherein, the Hon'ble Supreme Court has dealt with a case where the Lower Court in exercise of its discretion had allowed the application filed by the respondent before the Hon'ble Supreme Court. Even in the said Judgment, the Hon'ble Supreme Court has observed that under Order 18 Rule 17 C.P.C., power cannot be invoked to fill up the lacuna in the evidence which was already let in by the witnesses.

5. It is further reiterated that the discretionary power conferred upon the Court should be exercised sparingly in appropriate cases and that the Court should see that the trial is not unnecessarily protracted because of recall of witnesses. It is also held as a principle that it is not open to recall the witnesses "for further elaboration on left out points". Hence, the Judgment cited by the learned counsel for the petitioner is against him.

6. This Court normally is not expected to interfere with the discretion exercised by the Court, unless the reasons given by the trial Court in rejecting the applications filed under Order 18 Rule 17 of C.P.C., are irrational or suggestive of non-judicial approach. Invoking the provision under Order 18 Rule 17 of C.P.C., to recall the witnesses of other side cannot be permitted as a matter of course, on the bald statement that there was omissions to raise crucial questions. Having regard to the principles on which this Court and the Hon'ble Supreme Court has decided similar cases, this Court has no other option but to dismiss the Civil Revision petitions.



7. Accordingly, the Civil Revision petitions are dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

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Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1 The Principal District Munsif,
Dindigul.

2 The Record Keeper,
VR Section,
Madurai Bench Of Madras High Court,
Madurai

+1 cc to MR.R.SUBRAMANIAN, Advocate SR.No.79722

+1 cc to MR.GOMATHI SANKAR, Advocate SR.No.79595

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