



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2536 of 2016

and

C.M.P (MD) No.11948 of 2016

S.Balasubramanian .. Petitioner/Petitioner/Defendant

-vs-

Paramasivan .. Respondent/Respondent/Plaintiff

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 03.11.2016 made in I.A.No.466 of 2016 in O.S.No.287 of 2011 on the file of the Principal Sub Court, Tirunelveli.

For Petitioner : Mr.S.P.Maharajan

For Respondent : Mr.H.Arumugam

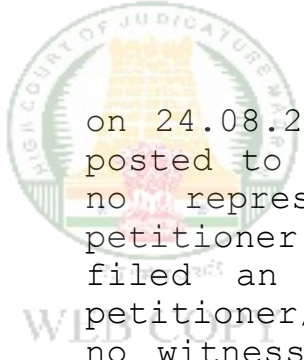
ORDER

The petitioner has filed the above Civil Revision Petition against the fair and decreetal order, dated 03.11.2016 made in I.A.No.466 of 2016 in O.S.No.287 of 2011 by the Principal Sub Court, Tirunelveli.

2.The petitioner is the defendant in the suit in O.S.No.287 of 2011 on the file of the Principal Sub Court, Tirunelveli and the respondent is the plaintiff in the said suit.

3.The respondent/plaintiff filed the said suit for recovery of possession. The petitioner filed written statement and contested the suit. The trial commenced and P.W.1 was examined in chief and cross-examined by the counsel for the petitioner. The respondent/plaintiff's side evidence was closed. The petitioner filed an application in I.A.No.466 of 2016 to recall P.W.1 under Order 18 Rule 17 C.P.C stating that certain important questions were omitted to be asked to P.W.1.

4.The respondent/plaintiff filed counter-affidavit and opposed the said application and stated that after closing the respondent/plaintiff's side evidence, the petitioner was examined



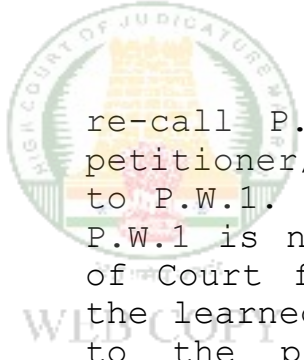
on 24.08.2016 and for further evidence of the petitioner, it was posted to 09.09.2016 and 12.09.2016 and on 12.09.2016, there was no representation for the petitioner and therefore, the petitioner's side evidence was closed. Thereafter, the petitioner filed an application in I.A.No.423 of 2016 to re-open the petitioner/defendant's side evidence. The said I.A was ordered and no witnesses were examined on behalf of the petitioner. Only to drag on the suit, the petitioner has now filed the application in I.A.No.466 of 2016 to recall P.W.1 and the Principal Sub Judge, Tirunelveli, considering the averments made in the affidavit and counter-affidavit and Judgments relied on by the counsel for the parties and argument of the counsel for the parties, dismissed the said I.A holding that the petitioner has filed the application in order to to fill up lacuna. Against the order of dismissal, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel for the petitioner submitted that the learned Judge has erred in holding that the application is filed only to fill up lacuna in the suit. The learned Judge ought to have given an opportunity to the petitioner/defendant to putforth the important questions to P.W.1 which were left out at the time of cross-examination of P.W.1. The learned counsel for the petitioner further submitted that the respondent, who is his elder brother, is preventing the witnesses from appearing on behalf of the petitioner before the Court and to give evidence before the Court below and prayed for allowing the Civil Revision Petition. The learned counsel for the petitioner has also relied on the Judgment of this Court in **C.R.P(MD)No.1649 of 2014, dated 17.09.2014 [The Bishop of Kottar and another Vs. Oor Committee Melaperuvillai]**.

6.The learned counsel for the respondent submitted that the learned Judge has properly appreciated all the materials on record and has exercised the jurisdiction properly and there is no reason warranting interference with the order of the trial Court and prayed for dismissal of the Civil Revision Petition.

7.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

8.From the records it is seen that after closing the evidence of P.W.1, the petitioner was examined as D.W.1 and he was cross-examined on 24.08.2016. when the suit was posted for further evidence on two occasions, there was no representation on behalf of the petitioner. Therefore, the petitioner/defendant's side evidence was closed. On application in I.A.No.423 of 2016, the petitioner/defendant's side evidence was re-opened and it was posted for further evidence on 24.10.2016 and on that day, the petitioner/defendant did not produce any witness on his behalf and he has now filed the present application in I.A.No.466 of 2016 to



re-call P.W.1 for cross-examination of P.W.1. According to the petitioner/defendant, some important questions were not put forth to P.W.1. The reason given by the petitioner/defendant to re-call P.W.1 is not acceptable reason for exercising discretionary power of Court for re-calling witnesses and the Judgment relied on by the learned counsel for the petitioner/defendant is not applicable to the present case. The Principal Sub Judge, Tirunelveli, considering all the materials and Judgments relied on by the learned counsel for the respondent/plaintiff, has given valid reason for dismissing the petition to re-call the evidence of P.W.1 and there is no irregularity or illegality in the order passed by the trial Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Tirunelveli.

+1 cc to MR.S.P.MAHARAJAN, Advocate SR.No.80684

+1 cc to MR.H.ARUMUGAM, Advocate SR.No.81080

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14.12.2016

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