



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.640 & 641 of 2016 (PD)

and

C.M.P.(MD)No.2921 of 2016

Mariappan Chettiar

..Petitioner
in both C.R.Ps.

Vs.

Kottursamy

..Respondent
in both C.R.Ps.

PRAYER in both the Petitions : Civil Revision Petitions are filed, under Article 227 of Constitution of India, to set aside the Judgment and Decree passed by the Learned Additional Sub Judge, Tenkasi, dated 27.01.2016 in I.A.No.131 & 132/2015 in OS.No.55/2015 in Both the petitioner.

For Petitioners : Mr.S.Sukumar

ORDER

In both the Civil Revision Petitions, the parties are one and the same and issue involved is one and the same, therefore common order is passed.

2.These Civil Revision Petitions have been filed by the petitioner to set aside the Judgment and Decree passed by the Learned Additional Sub Judge, Tenkasi, dated 27.01.2016.

3.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed the suit in O.S.No.55 of 2012, before the Additional Sub Judge, Tenkasi for recovery money and in default, to bring the 4th schedule property mentioned in the suit on auction and to pay the amount to the plaintiff and in case, the auctioned amount is less, to pass a personal decree in respect of the defendant and for costs. The petitioner filed written statement and contesting the suit. Trial commenced. The respondent let in evidence and closed his side and suit was posted for evidence on behalf of the petitioner.



4.The petitioner filed I.A.Nos.131 & 132 of 2015 for re-open and recall the P.Ws.1 & 2 for further cross-examination. According to the petitioner, P.W.2 admitted to, petitioner's son that he and respondent conspired together over phone and the same was recorded and the said document is available. Therefore, the petitioner wants to cross-examine the respondent's witness on this aspect. The respondent filed counter affidavit and denied the averments made by the petitioner. The respondent stated that the petitioner did not plead in the written statement that the respondent and P.W.2 conspired together. The petitioner was set ex-parte on two occasions and subsequently on his applications, the set orders were set aside. Similarly, on two occasions, he filed petition for re-open and recalling the P.Ws.1 & 2 for further cross-examination. All the applications filed by the petitioner were allowed and petitioner cross-examined the respondent. The respondent also stated that the petitioner has filed the applications only to prolong the matter and prayed for dismissal of the applications. The learned Judge considering the facts and materials on record and judgment relied on by the counsel for the respondent, dismissed the both applications. Against that orders, the petitioner has filed the present Civil Revision Petitions.

5.The learned counsel for the petitioner contended that the learned Judge failed to see the Order 18 Rule 17 of Civil Procedure Code the witness can be recalled at any time for further cross-examination. The necessity for recalling the P.W.2 arose only after completion of cross-examination as he suppressed. The learned Judge failed to take note that the petitioner and his wife gave complaint to the Panchayat and Panchayat was held on 10.01.2011 between the parties and the matter was settled but P.W.2. Suppressed this fact. The learned Judge failed to see that the petitioner pleaded in written statement, the conspiracy between P.W.2, respondent and others.

6.The learned counsel for the petitioner relied on the order passed by the Hon'ble Supreme Court of India, in Civil Appeal Nos.2795, 2796 of 2011,

"17.Ideally, the recording of evidence should be continuous, followed by arguments, without any gap, Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.



18. In this case, we are satisfied that in the interests of justice and to prevent abuse of the process of Court, the trial Court ought to have considered whether it was necessary to re-open the evidence and if so, in what manner and to what extent further evidence should be permitted in exercise of its power under Section 151 of the Code. The Court ought to have also considered whether it should straightway recall P.W.1 and P.W.2 and permit the appellant to confront the said recorded evidence to the said witnesses or whether it should first receive such evidence by requiring its proof of its authenticity and only then permit it to be confronted to the witnesses (PW1 and PW2).

7. From the records, it is seen that the petitioner was set ex-parte on two occasions and the said order was subsequently revoked. The petitioner filed petitions for re-open and recalling the P.W.1 and P.W.2. On two occasions, applications were allowed and his counsel cross-examined the P.W.1 and P.W.2. The suit is posted for evidence on behalf of the petitioner. At that time, the petitioner has filed the applications to re-open and recalling of P.W.1 and P.W.2 for the third time. The petitioner had an opportunity to cross-examine the P.W.2 with regard to conversation of P.W.2 with petitioner's son. The petitioner has not given any reason for not cross-examining the P.W.2 on earlier occasions. On this points, the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the case.

8. In the circumstances, considering all these aspects, the learned Judge dismissed the application by giving cogent and valid reason. There is no irregularity or illegality warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

22.03.2016

am

Index : Yes

Sd/
Assistant Registrar

/True Copy/



To

The Additional Sub Judge,
Tenkasi.

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+1cc to Mr.S.Sukumar, Advocate in SR.No.16231

SDR:SKS-RR/4P/3C

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