

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.12.2016

PRONOUNCED ON: 18.01.2017

CORAM:

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

CRP(PD)No.1525 of 2013

and

M.P.No.1 of 2013

1.Pastor Thangamuthu @
John Thangamuthu (Died)

2.Daisy Rathinakumari

3.Bercy Chandra .T

4.Jim Reeves .T

5.Joe Apollos .T ... Petitioners

(Petitioners 2 to 5 brought on record as LR's of
The deceased sole Petitioner vide order dated
22.08.2016 made in CMP.Nos.4519 & 4520/2006
in CRP.No.1525 of 2013)

Vs.

K.K.Gnaneswaran ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order of the Sub-Court, Poonamallee in I.A.No.463 of 2012 in O.S.No.37 of 2005, dated 11.03.2013.

For Petitioners : Mr.T.Easwaradhas

For Respondent : Mr.L.Rajasekar

ORDER

The defendant in O.S.No.37 of 2005 is the revision petitioner before this Court.

2.The case of the petitioner is that the money suit based on a mortgage deed is being tried by the competent Court, wherein witnesses have been produced on either side and the trial was over. When the case was posted for arguments, the plaintiff filed an I.A.No.463 of 2012 for the re-open the evidence on the plaintiff's side in order to examine an attesting witness of the mortgage deed dated 01.11.1993.

3.By reputing the contention of the petition, the respondent filed counter saying that the said application is liable to be dismissed on the ground that it was filed belatedly that too after the trial was over. So the same is not entertainable.

4.Considering the averments made in the affidavit and counter affidavit, the learned trial Court allowed the said application by

concluding that an opportunity is to be given to the petitioner to examine the attester. The learned trial Judge has also relied on the Judgment of the Hon'ble Supreme Court in **2011 (7) MLJ 612**. Challenging the said order, this civil revision petition has been filed before this Court.

5. Heard Mr.T.Easwaradhas, learned counsel appearing for the petitioners and Mr.L.Rajasekar, learned counsel appearing for the respondent.

6.This was considered by this Court and the Hon'ble Apex Court in various cases. This Court consider that as per the above provision the trial Court itself having power to recall the witness on suo motu and also at the instance of a party. This was held by this Court in the following judgments:

(1) ***S.Rathinaswamy, Tiruvarur v. S.Bhanamuthatti Thiruvarur, 2006 (3) MLJ 539.***

"The powers of the Court to recall a witness at any stage under this rule can be exercised suo motu and also at the instance of a party."

(2) ***Andichi Ammal v. Peria Muniyandi Moopar, 1994 (1) MLJ 514.***

“The power to recall a witness can be ordered by the Court suo motu as also at the instance of either party.”

(3) The Hon’ble Apex Court clearly held in a case of ***K.K.Velusamy v. N.Palanisamy*** reported in **2011 (7) MLJ 612**:

“When the application under Order 18 Rule 17 of CPC is found bonafide and where the Additional evidence will assist the Court to clarify the evidence on issues and will assists in rendering justice the Court may exercise its discretion to recall the witness or permit the fresh evidence.”

7.As per the provision under Order 18 Rule 17 of C.P.C., it is stated as follows:-

“17. Court may recall and examine witness.-The Court may, at any stage of a suit, recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.”

8.On fair reading of the above provision under Order 18 Rule 17 of the Civil Procedure Code as well as the judgments produced by the petitioner, the parties have right to recall any witness at any stage of the suit and to recall a witness at any stage. Under the above rule the Court can exercise suo motu and also at the instance of a party.

9.It is not in dispute that this a money suit based on a mortgage deed. Further, though the case is posted for arguments, the application for re-open the evidence on the side of the plaintiff/petitioner is filed for the first time. It is to be meaningful that all the parties should exhaust their legal rights before the trial Court with complete bonafide. Hence, in filing the application for re-open the evidence, this Court do not find any malafide on the part of the petitioner. Moreover, no lacuna can be filled up in examining the attesting witness namely the attestors. Therefore, this Court do not find any merits in the above civil revision petition and the same is liable to be dismissed.

10.Accordingly, this civil revision petition is dismissed, since the suit is of the year 2005 and the same is posted for arguments, this Court is directed the petitioner/plaintiff to examine the attestor of the deed of mortgage dated 01.11.1993 at the earliest i.e. within a period of two weeks from the date of receipt of a copy of this order and the respondent/defendant is to give liberty to cross examine such a witness at the earliest at any rate within a period of one week thereafter. The trial Court is directed to dispose of the suit before end of March 2017.

11.In the result:

(a)this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.463 of 2012 in O.S.No.37 of 2005, dated 11.03.2013, on the file of the Subordinate Court, Poonamallee.

(b)the respondent/plaintiff is hereby directed to examine the witness attestor of the deed of mortgage deed dated 01.11.1993 at the earliest i.e. within a period of two weeks from the date of receipt of the copy of this order and the petitioner/defendant is to give liberty to cross examine such a witness at the earliest at any rate within a period of one week thereafter.

(c)the trial Court is hereby directed to dispose the suit within a period of two months thereafter on day to day basis without giving any adjournment to either parties and both the parties are directed to co-operate for the early disposal of the suit in O.S.No.37 of 2005.

12.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.01.2017

vs

Index:Yes

Internet:Yes

To

The Subordinate Court,
Poonamallee.

M.V.MURALIDARAN,J.

vs

**Pre-Delivery Order made in
CRP(PD)No.1525 of 2013
and
M.P.No.1 of 2013**

18.01.2017