

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

CORAM

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

C.R.P.(PD) Nos.3393 to 3395 of 2009
and
M.P.No.1 of 2009

1.Jayalakshmi @ Jayam
2.R.Govindasamy .. Petitioners in all the CRPs
(Rep. by Power of Attorney Agent
Pon.Venkatraman)

vs

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Nungambakkam,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Mayiladuthurai.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Villupuram.
- 4.The Inspector,
Hindu Religious and Charitable Endowments Board,
Thirukoilur.
- 5.Gururajan
- 6.Parthasarathy

7.Natarajan

.. Respondents in all the CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India against the order dated 12.8.2009 in I.A.Nos.263 to 265 of 2009 in O.S.No.8 of 2005 on the file of the I Additional Subordinate Judge, Villupuram.

(In all the CRPs)

For Petitioners : Mr.R.Gururaj

For Respondents : Mr.T.Jayaramaraj
Govt. Advocate (CS)
for respondents 1 to 4

No Appearance
for respondents 5 to 7

COMMON ORDER

These revisions are directed against the order of the learned I Additional Subordinate Judge, Villupuram dated 12.8.2009 passed in I.A.Nos.263 to 265 of 2005 in O.S.No.8 of 2005, dismissing the petitions filed by the petitioners to re-open the case of the plaintiffs side; re-call P.W.1 and to mark documents.

2. The petitioners, who are plaintiffs have filed I.A.Nos.263 to 265 of 2009 seeking to re-open the case of the plaintiffs' side; re-call

the evidence of P.W.1 and to mark the documents filed along with the petition alleging that the petitioners have obtained the documents mentioned in the petition. The said documents are very vital documents to prove the case of the petitioners. Therefore, it is necessary to re-open the case of the plaintiffs to mark those documents by recalling P.W.1.

3. Resisting the petitions, 5th respondent filed counter stating that the documents which are to be marked in the suit are documents created by the plaintiffs and the defendants 1 to 4 after the suit and those documents cannot be marked as plaintiffs' side documents. It is stated that the documents are to be marked through the concerned officials and then only respondent No.5 would be in a position to cross-examine the official witness. Through P.W.1 the above said documents cannot be marked. It is also stated that already the petitioners have filed petition to re-open the case of the defendants side and after enquiry, the same was dismissed. Now in order to drag on the proceedings, the petitioners have filed the present applications and the same cannot be entertained.

4. Upon consideration of the rival submissions, the trial Court

dismissed all the three petitions. Aggrieved by the same, the petitioners have preferred these Civil Revision Petitions.

5. I heard Mr.R.Gururaj, learned counsel for the petitioners and Mr.T.Jayaramaraj, learned Government Advocate (CS) appearing for the respondents 1 to 4 and perused the entire materials available on record. There was no appearance for the respondents 5 to 7.

6. The petitioners have filed the suit for declaration that the proceedings and order passed by the 1st defendant dated 20.9.2004 in S.M.R.No.1/97 (9493/92 D2) as null and void and arbitrary and consequently, restraining the defendants 1 to 4 from implementing the order dated 20.9.2004. The petitioners have also sought declaration to declare that the trusteeship to Arulmighu Drowpathiamman temple, Kheezaiyur, Tirukoilur is hereditary in the family of the petitioners and consequently, restraining the defendants, their men and agents from in any manner interfering with the right of the family of plaintiffs from discharging their duties as hereditary trustee of Arulmighu Drowpathiamman temple, Kheezaiyur, Tirukoilur and for costs.

7. It appears that in the suit, both sides evidence were closed

and the suit is now pending for arguments. At this stage, the petitioners have filed petitions to re-open the case of the plaintiffs so as to enable them to mark certain documents by re-calling P.W.1.

8. The trial Court dismissed all three petitions by way of separate orders holding that already the plaintiffs have filed petitions to re-open the case and the same was dismissed and in order to drag on the proceedings, the plaintiffs have filed the present petitions. Moreover, except document No.1, the other documents are after the suit. The trial Court further held that as far as document No.1 is concerned, the deponent of the affidavit viz., Venkatraman had been appointed as power agent of the plaintiffs, but the fact remains that he had not been appointed as power agent pursuant to document No.1.

9. In these revisions, despite service, the private respondents, particularly, the 5th respondent who had filed the counter before the trial Court opposing the prayers of the petitioners has not entered appearance.

10. As stated supra, one of the prayers in the suit is to declare that the trusteeship to Arulmighu Drowpathiamman temple,

Kheezaiyur, Tirukoilur is hereditary in the family of the plaintiffs. The petitioners pleaded that now some important documents have been obtained by them and they are vital documents to prove their case. The respondent No.5 strongly opposed the petitions contending that except document No.1, all other documents are after suit and the same cannot be received in evidence and the aim of the petitioners is to drag on the proceedings.

11. Admittedly, proof and relevancy of the documents cannot be decided by the trial Court while dealing with the application to re-open, re-call and receiving of documents. The trial Court has to see whether sufficient cause has been shown for the delay in filing those documents. In the case on hand, the petitioners pleaded that now only they have obtained the documents and there was no intention to drag on the suit proceedings. Though the petitioners have filed petitions to re-open, re-call and receiving of documents at the stage of arguments, the stage of the suit when petitions were filed cannot be reason to dismiss the petitions by the trial Court. The contention of respondent No.5 that in order to drag on the trial proceedings, the petitioners have filed the petitions cannot be countenanced.

12. It is well settled that an opportunity to a party to recall or examine any witnesses may not be refused on the ground that the evidence of both sides are over and the matter is adjourned for arguments, as hearing of arguments in a suit is not a distinct stage of the hearing contemplated by the Code of Civil Procedure, but it is a part of hearing just as such as recording of evidence.

13. Law of procedure is handmaid of justice and it must be used to advance the cause of justice and to avoid causing injustice. Hence, further examination of P.W.1, sought for by the petitioners is necessary for a decision of the case. No prejudice would be caused if the case of the plaintiffs re-opened and re-called P.W.1 for the purpose of marking certain documents.

14. Since the plaintiffs have filed the suit for declaration qua trusteeship, the onus is heavily on the petitioners to prove their case. In order to provide an opportunity to bring all facts and in order to give a quietus to the litigation on merits, it is necessary to re-open the case of the plaintiffs side and to re-call P.W.1 for the purpose of marking the documents described in I.A.No.265 of 2009. The trial Court is at discretion to mark the documents described in I.A.No.265

of 2009. By way of allowing I.A.No.265 of 2009, only the documents filed along with the said petition have been ordered to be received and nothing more. As stated supra, this Court has not gone into the relevancy of the documents and it is for the trial Court to look into the same.

15. For the foregoing discussion, the orders of the trial Court is liable to be set aside and the Civil Revision Petitions are liable to be allowed.

16. In the result,

(a) The Civil Revision Petitions are allowed by setting aside the orders in I.A.Nos.263 to 265 of 2009 in O.S.No.8 of 2005 passed by the learned I Additional Subordinate Judge, Villupuram.

(b) Since the suit is of the year 2005 and is pending for the past 11 years, the trial Court is directed to dispose of the suit within a period of 60 (sixty) days from the date of receipt of a copy of this order by conducting the trial on day-to-day basis, without giving any adjournment to either

parties.

(c) Both parties are hereby directed to co-operate the trial Court to dispose of the suit within the time stipulated.

(d) The trial Court is directed to file a report before this Court within two weeks after disposal of the suit, as indicated above.

(e) No costs. Consequently, connected miscellaneous petition is closed.

17.02.2017

vs

Note: Issue order copy on 10.01.2019

Index : Yes

To

The I Additional Subordinate Judge,
Villupuram.

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M.V.MURALIDARAN, J.

vs



Pre-delivery order made in
C.R.P.(PD) Nos.3393 to 3395 of 2009 and
M.P.No.1 of 2009

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