



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.03.2017

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.R.P (PD) (MD) Nos.509 and 510 of 2017

and

C.M.P (MD) No.2394 of 2017

Pithelis .. Petitioner in both CRPs/Petitioner/Petitioner
versus

1) Suyambukani

2) Viji

3) Mariya Mutharasi.. Respondents in both CRPs/Respondents/Defendants

Prayer in both CRPs : Petitions filed under Article 227 of the Constitution of India, against the orders dated 11.01.2017 made in I.A.Nos.282 and 283 of 2016 in O.S.No.232 of 2010 on the file of the Additional District Munsif Court, Vallioor.

For Petitioner : Mr.S.Siva Thilakar

For R2 : Mr.H.Arumugam

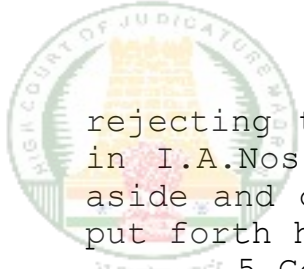
COMMON ORDER

The revision petitioner is the plaintiff in the suit filed for declaration and permanent injunction. He has taken out applications under Order 18 Rule 17, when the matter was posted for arguments.

2.The sum and substance of the applications filed by the revision petitioner is that while he was preparing for arguments, he found that certain important questions were not put forth to DW4, while he was cross examined and therefore, it is necessary to reopen the evidence and to recall DW4 for cross examination. The said applications were opposed by the defendants.

3.The Trial Court, taking note of the fact that earlier, this revision petitioner filed I.A 622/2015 to re-call DW3 and later it got disposed as not pressed and after prolonged delay, he has now taken out the present application to re-call DW4, without assigning any specific reason as to why DW4 is to be re-called and what prevented the plaintiff from putting forth questions, when DW4 was in the witness box. Therefore, there is no necessity to re-call the witness when the matter was posted for arguments.

4.Aggrieved by the said finding, the present revision petitions have been filed, on the ground that by allowing re-open and re-call petitions, no prejudice will be caused to the respondents/defendants and no reason has been assigned for



rejecting the plea of re-open and re-call. Therefore, orders made in I.A.Nos.282 and 282 of 2016 in O.S.No.232 of 2010 must be set aside and opportunity should be given to the revision petitioner to put forth his case effectively.

5. Going through the notes paper and B-Diary Extract, this Court finds that the suit which was filed in the year 2010, was taken up for trial on 03.01.2014, after framing issues. Proof affidavit of PW1 was filed on 12.08.2014, after examining one witness on behalf of the plaintiff and three witnesses on behalf of the defendants. The plaintiff side witnesses was closed on 24.09.2014. Thereafter, the examination of defendants side witnesses had commenced on 09.10.2014 and the defendants side evidence was closed on 26.08.2015 and the matter was posted arguments on 02.09.2015.

6. From that day onwards, for nearly 53 adjournments have been granted by the Trial Court, because of the non representation of the parties or on the pretext of filing application to re-open and re-call. So, by the conduct of the revision petitioner/plaintiff, particularly, the case which was posted for arguments on 02.09.2015, could not be effectively proceeded further till date. The application to re-call DW4 has been filed on 23.08.2016, while DW4 examination was over by 13.08.2015 and nearly after one year, these applications have been filed and for nearly one year, no progress was made by the plaintiff, though the matter was posted for further arguments.

7. Therefore, this Court finds that no justifiable and genuine reason on the part of the revision petitioner to re-open and re-call the witness. Hence, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The Judge,
Additional District Munsif Court,
Valliyoor.

+1 CC TO MR.H.ARUMUGAM, ADVOCATE, SR NO.16154
+1 CC TO MR.S.SIVA THILAKAR, ADVOCATE, SR NO15990

mm/nbi
MAS/RR:28.03.2017:2P-4C

Pre-Delivery order made in
C.R.P (PD) (MD) Nos.509 and 510 of 2017
20.03.2017