



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos.1743 & 1744 of 2016 (PD)

and

C.M.P. (MD) Nos.8435 & 8436 of 2016

A.Arunachalam

.. Petitioner
in both the

C.R.Ps.

Vs.

M.Valliyayappan

.. Respondent
in both the C.R.Ps.

Prayer in both the C.R.Ps.: Civil Revision Petitions filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 09.06.2016, made in I.A.Nos.45 and 46 of 2016 in O.S.No.66 of 2007 on the file of the Additional District Munsif Court, Karaikudi, and set aside the same.

For Petitioner : Mr.V.OM.Prakash
(in both the C.R.Ps.)

For Respondent : Mr.AL.Kannan
(in both the C.R.Ps.)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order, dated 09.06.2016, made in I.A.Nos.45 and 46 of 2016 in O.S.No.66 of 2007 on the file of the Additional District Munsif Court, Karaikudi.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. Facts of the case:-

(i) The petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.66 of 2007 on the file of the Additional District Munsif Court, Karaikudi, for perpetual injunction and mandatory injunction.



(ii) The respondent filed written statement on 20.03.2007 and contested the suit.

(iii) In the said suit, both sides evidence were concluded and the suit was posted for arguments. At that stage, the petitioner filed I.A.Nos.45 and 46 of 2016 to re-open and re-call the witness. According to the petitioner, in the original partition deed, dated 19.05.1999, entered into between the petitioner and his brother and other documents connected to the said partition deed, were traced recently and it is necessary for the said document to be marked to prove the case of the petitioner. A copy of the partition deed has already been filed by the petitioner.

(iv) The respondent filed counter affidavit and opposed the said applications and submitted that after conclusion of the evidence on both sides, the suit was posted for arguments on various dates. The petitioner took for more than 10 adjournments to argue the matter. The respondent's side argument was over. At that time, the petitioner filed the applications only to drag on the proceedings and therefore, the said applications are not maintainable. The petitioner has not given any reason for not producing partition deed earlier and has not stated any details with regard to the documents connected to the partition deed. The suit is of the year 2007 and the respondent is a Senior Citizen and only to drag on the proceedings, the petitioner has come out with the present petitions.

(v) The learned Additional District Munsif, Karaikudi, considering the averments made in the affidavit and the counter affidavit, dismissed both the Interlocutory Applications holding that the petitioner has not stated anything about the documents in the plaint and has not furnished any details and also has not filed any particulars about the connected documents.

4. Against the said dismissal order dated 09.06.2016, the petitioner has filed the present Civil Revision Petitions.

5. The learned counsel for the petitioner submitted that the learned Additional District Munsif failed to consider the validity of the partition deed, dated 19.05.1999, which supports the case of the petitioner. The learned Additional District Munsif failed to consider the ex-parte decree dated 20.07.2010 passed under Order 17 Rule 2 C.P.C., was set aside only on 17.02.2012, in I.A.No.561 of 2011 filed by the respondent.

6. The learned counsel for the respondent submitted that the respondent is a Senior Citizen. After completion of the evidence, the petitioner took more than 10 adjournments for arguments. The arguments were advanced on behalf of the respondent. While so, the petitioner filed the Interlocutory Applications to re-open and re-call the witness. He has not given any reason for not producing the documents at the time of adducing evidence and prayed for dismissal of the Civil Revision Petitions.



7. In support of his submissions, the learned counsel for the respondent relied on the following judgments:

(i) 2013 (3) MLJ 185 (SC) [Bagai Construction Vs. Gupta Building Material Store], wherein at paragraphs 11 and 12, it has been held as follows:

"11. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the Court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted.

12. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 CPC."

(ii) 2014 (3) CTC 518 [S.Ramasamy Vs. Perumal and others], wherein at paragraph 15, it has been held as follows:

"15. It is pertinent to note that the Defendants have not filed any Application for condonation of delay in receiving the documents. It is also to be noted that the DW1 to DW4 were already examined. However, they have not given any details as to why the relevant documents were not produced before the witnesses were examined, why the documents were not marked and through them, the questions were not posed on the Witnesses. Mere seeking to recall the Witnesses cannot be a reason for allowing the same. But, it is a well settled dictum of the Hon'ble Apex Court, no Petition to re-call can be allowed merely to fill up the lacunae in the evidence let in by them."

<https://hcservices.courts.gov.in/hcservices>
8. I have heard the learned counsel for the petitioner and the respondent and carefully perused the materials available on record.



9. The petitioner filed I.A.Nos.45 and 46 of 2016 to re-open and re-call the witness. According to the petitioner, the partition deed and other connected documents were traced only recently and unless, the suit is re-opened and these documents are marked, he will not be in a position to prove his case. The learned Additional District Munsif considering the averments made in the affidavit and also taking note of the fact that the petitioner has not given any reason for not producing the documents earlier and also not furnishing the details of connected documents sought to be filed, has held that the suit is of the year 2007 and the applications are filed only to drag on the proceedings. The learned Additional District Munsif upon considering the judgment reported in 2013 (1) MWN (Civil) 573 [Bagai Construction Vs. Gupta Building Material Store], has rightly applied the ratio in the judgment and dismissed the applications. There is no illegality or irregularity warranting interference by this Court in the said order.

10. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Karaikudi.

+1Cc to Mr. V.R.Shanmuganathan, Advocate, SR. NO. 106

smn2

JS/ksm/25.01.2017/4p-5c

Common order in

C.R.P. (MD) Nos.1743 & 1744 of 2016 (PD)
and
C.M.P. (MD) Nos.8435 & 8436 of 2016
02.01.2017