

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD).No.2731 of 2013

and

M.P.No.1 of 2013

1.Manimegalai
2.Balaji
3.Ilavarasan

...

Petitioners

Vs.

1.Santhakumar
2.Anjana Devi
3.Jothi
4.Yogavalli
5.Velu
6.Elango
7.Malar
8.Vasugi

...

Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order in I.A.No.145 of 2013 in O.S.No.108 of 2009 dated 20.06.2013 on the file of the Sub Court, Tirupattur, Vellore District.

For Petitioners : Mr.PA.Sudesh Kumar

For Respondents : Ms.Elizabeth Ravi
for Mr.P.Raj

ORDER

The instant revision petition has been filed challenging the order dated 20.06.2013 passed in I.A.No.145 of 2013 in O.S.No.108 of 2009 on the file of the Sub Court, Tirupattur, Vellore District.

Brief facts leading to the filing of the revision:

2.The petitioners are the defendants in the suit O.S.No.108 of 2009 filed by the respondents seeking for partition of the suit schedule properties. The petitioners are the brothers of the respondents. Trial commenced in the suit O.S.No.108 of 2009 and it was also completed and the suit was posted for arguments before the Trial Court. At the stage of arguments, the petitioners filed I.A.No.145 of 2013 under section 151 C.P.C to re-open the case for the examination of witnesses on their side. The respondents also filed their counter in I.A.No.145 of 2013. The Trial Court by its order dated 20.06.2013 in I.A.No.145 of 2013 dismissed the said application on the ground that the petitioners have filed the said application only to protract the proceedings. Aggrieved by the dismissal of I.A.No.145 of 2013, the instant revision has been filed by the petitioner.

3.Heard, Mr.PA.Sudesh Kumar, learned counsel appearing for the petitioners and Ms.Elizabeth Ravi for Mr.P.Raja learned counsel appearing for the respondents.

4.The learned counsel appearing for the petitioners submitted that I.A.No.145 of 2013 was filed to re-open the case for the purpose of examination of the Sub Register, Jolarpettai as well as the witnesses to the partition deed dated 09.05.1989. According to the learned counsel appearing for the petitioners, there is a registered partition deed entered into between the brothers, who are the defendants in the suit O.S.No.108 of 2009 and the petitioners in I.A.No.145 of 2013 and there are witnesses to the said registered partition deed, who will have to be examined by the petitioners to disprove the claim made by the respondents. Further, he would submit that the Sub-Register, who registered the partition deed dated 09.05.1989, will also have to be examined by the petitioners to disprove the claim of the respondents. Therefore, according to him, the application I.A.No.145 of 2013 in O.S.No.108 of 2009 ought to have been allowed by the trial Court for the effective adjudication of the dispute.

5. Per contra, the learned counsel appearing for the respondents would submit that I.A.No.145 of 2013 was filed by the petitioners before the Trial Court only to protract the proceedings. She drew the attention of this Court to the findings of the Trial Court in its order dated 20.06.2013 passed in I.A.No.145 of 2013 and pointed out that it is the 5th time, the petitioners have come forward with an application to re-open the case for examination of witnesses on their side. According to her, all the applications were filed only in the stage of arguments after completion of the petitioners' side evidence. I.A.No.309 of 2012 was allowed on 06.11.2012. Subsequently, I.A.No.317 of 2012 was allowed on 29.11.2012 and I.A.No.341 of 2012 was allowed on 11.12.2012. According to her, the respondents in their counter statement filed in I.A.No.145 of 2013 have categorically stated that the said witnesses to the partition deed dated 09.05.1989 were very much available even during the trial and the petitioners could have examined them even then. Further, in the counter, the respondents have stated that apart from the applications mentioned above, the petitioners had also filed two other applications I.A.No.11 of 2013 & 12 of 2013 for re-examining DW2 and DW3 respectively and both these

applications were allowed by the Trial Court. According to the learned counsel appearing for the petitioners, as seen from the repeated filing of applications by the petitioners to re-open the case, it is clear that only to drag on the proceedings, these applications had been filed by the petitioners. Therefore, the trial Court has rightly rejected the I.A.No.145 of 2013.

DISCUSSION:

6.The respondents have filed the suit for partition against their brothers as well as another brother's wife and children. It is the case of the petitioners, who are the defendants in the suit, that there is a registered partition deed dated 09.05.1989 in their favour and therefore, the respondents are not entitled for any share in the suit schedule properties.

7.The instant I.A.No.145 of 2013 has been filed by the petitioners to re-open the case for examination of the witnesses. According to the petitioners, the witnesses to be examined are, the Sub-Register as well as the witnesses to the partition deed dated 09.05.1989. Even according to the petitioners, the partition deed was executed on 09.05.1989 and the suit was filed in the year 2009

by the respondents. The witnesses and the Sub-Register could have been examined even before the closing of the petitioners' side evidence by the Court. The witnesses are the parties, who have signed as witnesses to the petitioners' own document, namely, the partition deed dated 09.05.1989. The Sub-Register, who registered the partition deed dated 09.05.1989, was also very much available even at the time of commencement of trial. But, the petitioners chose to file I.A.No.145 of 2013 after almost six months from the date, when the trial Court posted the case for arguments. The Trial Court has also observed, as rightly pointed out by the learned counsel appearing for the respondents, that even earlier, the petitioners filed I.A.Nos.309 of 2012, 317 of 2012 and 341 of 2012, after the case was posted for arguments and all those applications were filed only to re-open the petitioners side evidence. It is always desirable that recording of witnesses should be continuous and followed by arguments and decision thereon within a reasonable time. The Hon'ble Supreme Court, in the case of **Bagai Construction Vs. Gupta Building Material Store** reported in **(2013) 14 SCC 1**, laid down the scope of Order XVIII Rule 17 CPC and held as follows:

"The perusal of the materials placed

by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words " at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record

certain bills and also granted permission to recall PW-1 to prove those bills. 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.

After change of various provisions by way of amendment in the CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible

avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial Court in order to overcome the lacunae in the 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 plaintiff has not placed those bills on record. It further shows that final arguments were heard on number of times and 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."

8. In the instant case, as rightly held by the Trial Court in the impugned order passed in I.A.No.145 of 2013, the petitioners have filed the said application only to protract the proceedings. The witnesses and the Sub Register, whom the respondents wanted to

examine, were very much available even at the time of the commencement of the oral evidence on their side. Admittedly, the said I.A. was filed only during the arguments stage and admittedly, earlier I.As. were filed by the petitioners and all of them were filed only during the arguments stage. This Court has examined the impugned order and is in agreement with the findings given by the Trial Court for rejecting I.A.No.145 of 2013.

CONCLUSION:

In the result, there is no merit in the instant Revision Petition. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Since some of the parties to the suit are senior citizens and considering the fact that the suit was filed in the year 2013, this Court directs the trial Court to dispose of the suit within a period of two months from the date of receipt of a copy of this order.

30.11.2018

Index : Yes / No

Internet : Yes / No

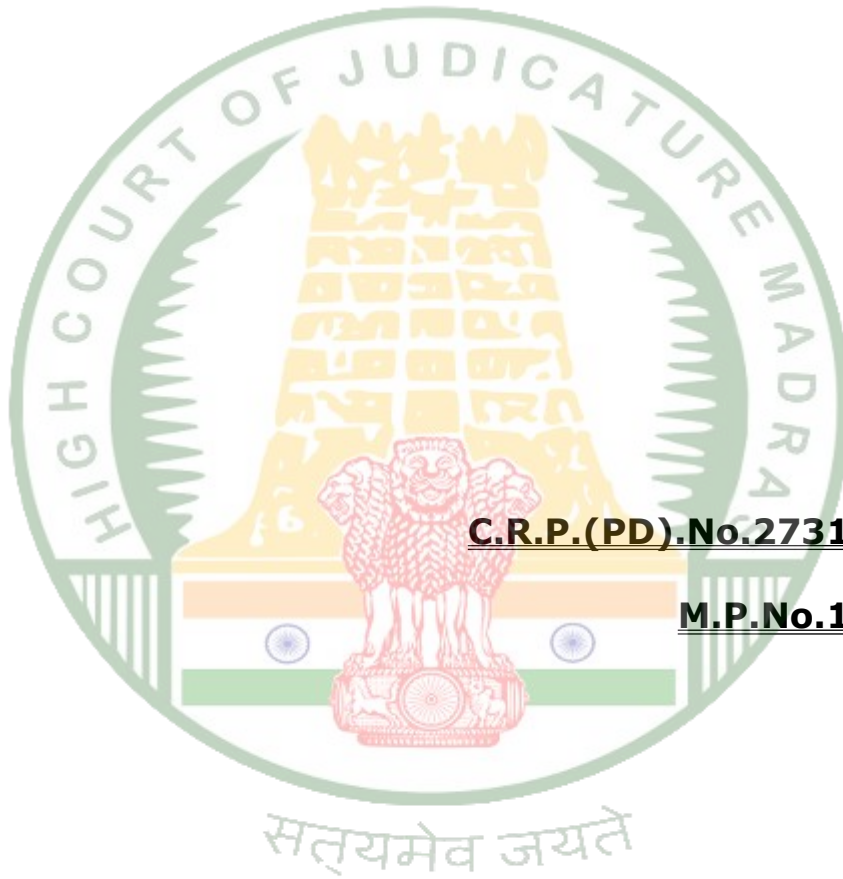
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To

The Sub Court, Tirupattur,
Vellore District.

ABDUL QUDDHOSE, J.

Kyl/sms



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