

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 21.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) No.4598 of 2017

and

CMP No.21662 of 2017

C.Sampath

...

Petitioner

Versus

Pavayee (Died)

1. Pavayammal

2. Athayammal

3. Angammal @ Angayammal

...

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decreetal order as made in I.A. No.1213 of 2017 in O.S. No.295 of 2014 , dated 07.11.2017 on the file of the Principal District Munsif Court, Erode.

For Petitioner

:

Mr.R.Bharanidharan

For Respondents

:

Mr.C.E.Prathap

for respondents RR1 to 3

ORDER

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The respondents have filed the suit in O.S.No.295 of 2014 for mandatory injunction and consequential permanent injunction against the petitioner herein. In the aforesaid suit, the evidence on both sides have been concluded and the matter has been posted for arguments on the side of defendant. The instant application

has been filed under Order VIII Rule 17 and section 151 of CPC, to recall PW1 for cross examination.

2. Challenging the aforesaid order the petitioner has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submits that if an opportunity is not granted to the petitioner to cross examine PW1 relating to the particular document, grave prejudice would be caused to the petitioner. Therefore, the petitioner prays that the application be allowed.

4. Learned counsel for the respondent submits that the evidence on both sides have been concluded and arguments on both sides have been completed and the matter is now posted for judgment. Therefore, at this stage, the Civil Revision Petition is liable to be dismissed.

5 This Court taking into consideration the facts and circumstances of the case and in the light of the Supreme Court decision reported in ***Ram Rati Vs. Manage Ram (D) through LRs and others*** (2016 (5) CTC 555), wherein the Hon'ble Supreme Court held that

"the power to recall witness can be exercised at any stage. However such power cannot invoked to fill up omission or lacuna in evidence already led by witness. Discretionary power envisaged under code should be exercised sparingly on appropriate cases. Court should see that trial is not unnecessarily protracted under guise of recall of witness".

b) In the decision of the Hon'ble Supreme Court reported in **Gayathri versus M.Girish (2017 (4) CTC 321**, for better appreciation the relevant portion of the judgment is extracted hereunder :-

8. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the Courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed .

"... 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 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 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, Code of Civil Procedure".

12. In the case at hand, it can indubitably be stated that the Defendant -petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of Civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita "Awake! Arise! Oh Partha" is apt here to be stated for guidance of Trial Courts. In view of the aforesaid analysis, we decline to

entertain the Special Leave Petition and dismiss it with Costs, which is assessed at Rs.50,000/- (Rupees Fifty thousand only). The costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the Trial Court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its Witnesses shall stand foreclosed."

6) By following the aforesaid judgments, this Court is of the considered view that no interference is called for with the order passed by the Court below. Hence, the impugned order passed, deserves to be confirmed and Civil Revision Petition is liable to be dismissed.

7) Accordingly, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

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Index : Yes/No
Internet : Yes / No
Speaking/Non Speaking
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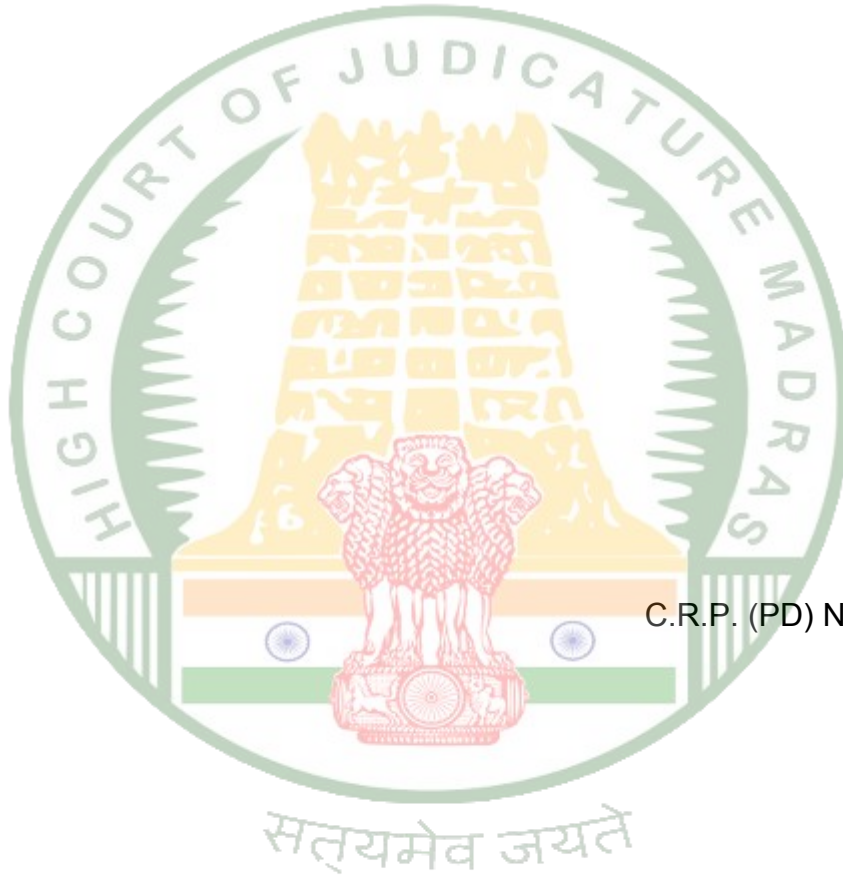
To

The Principal District Munsif Court, Erode.

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D.KRISHNAKUMAR, J.

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