

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.3.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.368 of 2018
and C.M.P.No.1989 of 2018

1 Ponnammal
2 Eswari
3 Moorthy
4 Krishnan
5 Anbu
6 Ramu @ Raman
7 Lakshmi

... Petitioners/Defendants

1 Chinnaponnu
2 Mageswari
3 Vennamathi
4 Muthulakshmi

... Respondents/Plaintiffs

This Civil Revision Petition is filed under Article 227 of the Constitution of India against the order, dated 07.11.2017 made in I.A.No.384 of 2017 in O.S.No.71 of 2011 on the file of the District Munsif, Arakkonam.

For Petitioner
For Respondent

: Mr.G.Jermiah
: Mr.J.Shanmugasundara Babu

D.KRISHNAKUMAR,J.

vaan

ORDER

According to the petitioner, the respondents have filed a suit in O.S.No.71 of 2011 for partition and permanent injunction against the petitioners herein. In the suit, evidence of both side closed and the case is posted for arguments. At this stage, the present application in I.A.No.384 of 2017 has been filed by the defendants to reopen the case for examination of the witness to prove the Will, dated 24.3.2004. Counter affidavit has been filed by the plaintiffs/respondents by stating that after concluding the evidence of both side, nearly after two years, the instant application has been filed. The trial court dismissed the said application. Therefore, the petitioner has preferred the present Civil revision petition before this court.

2 According to the petitioner, due to oversight, attesting witness of the Will was not examined by the defendants and therefore, the petitioners seek an opportunity to prove the genuineness of the Will in the partition suit. The court below erroneously dismissed the application and the same is liable to be set aside.

3 Per contra, the learned counsel for the respondents would submit that at the fag end of the trial, in order to protract the trial, the present application has been filed by the petitioner with inordinate delay and the delay is not properly explained in filing the application. Therefore, the court below has rightly dismissed the said application.

4 In *Ram Rati Vs. Mange Ram (dead) through legal representatives [(2016) 11 SCC 296]*, the Hon'ble Supreme Court has held as follows:

"12. In *Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate*, this principle has been summarised at paras 25, 28 and 29 (SCC pp. 414-15)

25. In our view, though the provisions of Order 18 Rule 17 of the Civil Procedure Code have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any

witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination".

5 In **Gayathri v. M. Girish**, (2016)14 SCC 142 the Hon'ble Supreme Court held as under:

8. In this context, we may fruitfully refer to *Bagai Construction v. Gupta Building Material Store* [Bagai Construction v. Gupta Building Material Store, (2013) 14 SCC 1 : (2014) 2 SCC (Civ) 382] . In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order 18 Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. 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: (SCC p. 7, para 15)

"15. ... 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 the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a 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."

6 In the light of the decisions of the Hon'ble Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the court below. Accordingly, the Civil revision petition fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

WEB COPY

13.3.2018

D.KRISHNAKUMAR, J.

vaan

Speaking/Non Speaking order

Index: Yes/No

vaan

To

The District Munsif, Arakkonam.



C.R.P. (PD) No.368 of 2018
and C.M.P.No.1989 of 2018

WEB COPY

Dated: 13.3.2018