

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.527 of 2018
and
CMP.No.2752 of 2018

Selvam

.. Petitioner

Vs

1.P.Nagendiran

2.K.Banumathi

3.Gandhimathi

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 05.01.2018 in IA.No.1459 of 2017 in OS.No.511 of 2009 on the file of Principal District Munsif Court, Erode, as prayed for to set aside the same.

For Petitioner

: Mr.S.Kaithamalai Kumaran

ORDER

According to the revision petitioner, the revision petitioner

has filed a suit in OS.No.511 of 2009 for permanent injunction against the respondents herein. In the aforesaid suit, written statement has been filed on 12.01.2010. The aforesaid case was posted for trial and the evidence on both sides were concluded. At that stage, the revision petitioner has filed the instant application in IA.No.1459 of 2017 under Section 151 of the Civil Procedure Code to reopen evidence on the side of plaintiff. After hearing both sides, the court below has dismissed the said application. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that since the 'B' schedule property falls within the domain of Lower Bhavani Project, the revision petitioner / plaintiff has filed the instant application to reopen the evidence on the side of plaintiff for examining the Executive Engineer of Lower Bavani Project so as to prove that 'B' schedule property has classified as "Nilaviyal Odai". Therefore, it is necessary to examine the said witness. But without considering the said contention of the revision petitioner, the court below has erroneously dismissed the said application. Hence, the revision petitioner has filed the present Civil Revision Petition before this Court.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. On perusal of the affidavit filed by the revision petitioner before the court below in support of the petition in IA.No.1459 of 2017, it is seen that the revision petitioner has disputed that the land is 'Nilaviyal Odai', the aforesaid suit has been filed in the year 2009 for permanent injunction, the trial commenced and defendants side evidence was concluded on 15.11.2017 and posted for arguments of both sides on 23.11.2017. At this stage, the present application has been filed by the revision petitioner.

5. It is useful to extract the decision of the Hon'ble Supreme Court in the case of **Ram Rati Vs. Mange Ram (dead) through legal representatives** reported in **(2016) 11 SCC 296**, wherein it has been held as follows:

"12. 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".

6. It is also useful to extract the decision of the Hon'ble Supreme Court in the case of **Gayathri Vs. M.Girish** reported in **2017 (4) CTC 321**, wherein the Hon'ble Supreme Court has held as follows.

"7. In this context, we may fruitfully refer to Bagai Construction through its Proprietor Lalit Bagai Vs. Gupta Building Material Store, 2013(1) MWN (Civil) 573 (SC) : 2013 (14) SCC 1. 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.

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:

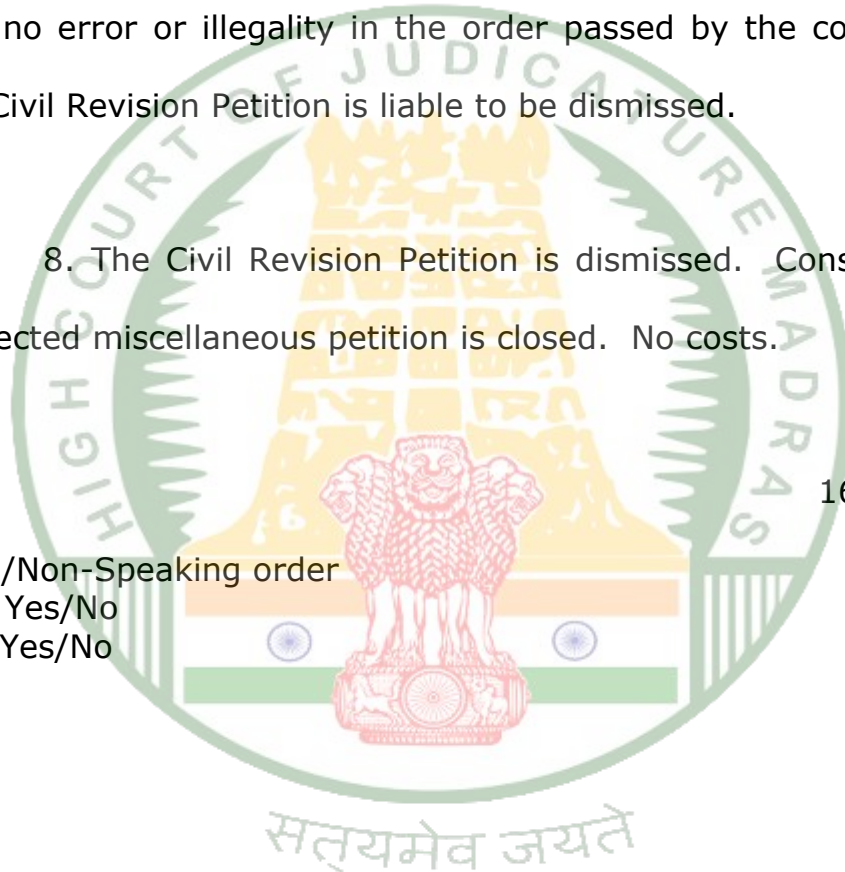
"... In fact, Applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those Applications are to be considered. We are satisfied that the Plaintiff has filed those two applications before the Trial Court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of 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."

7. On the facts of the present case on hand and the decisions cited supra, sufficient opportunity has already been granted to the revision petitioner. Hence, filing the present application at the fag end of the arguments is liable to be rejected. Therefore, this Court is not inclined to interfere with the orders passed by the court below. There is no error or illegality in the order passed by the court below and the Civil Revision Petition is liable to be dismissed.

8. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

16.02.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
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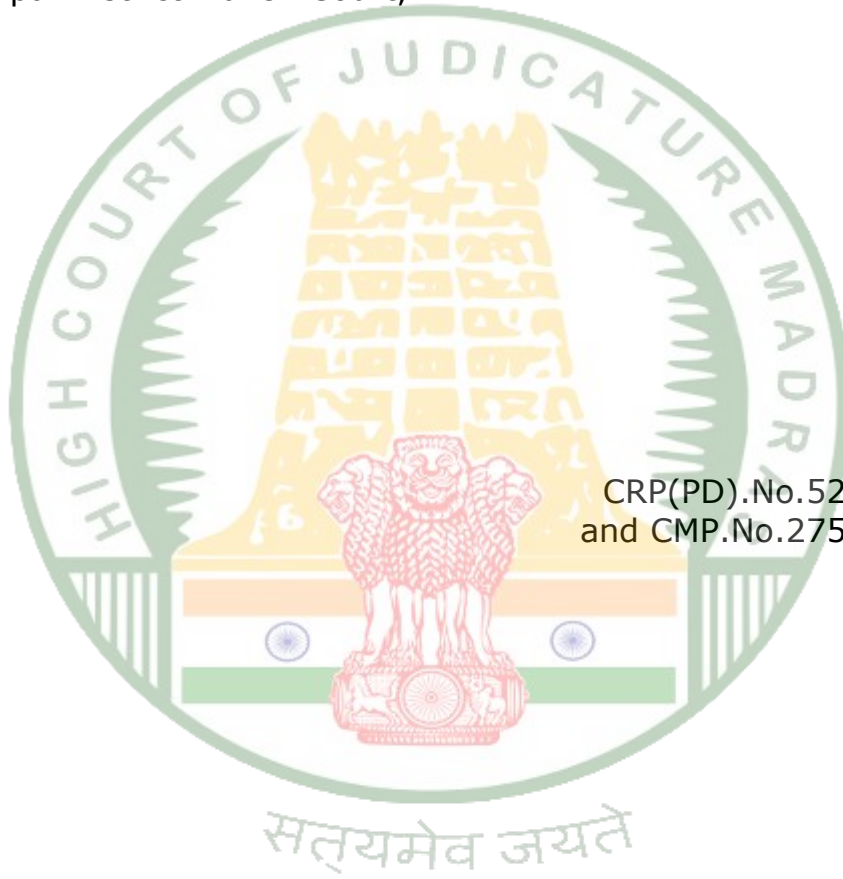
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D. KRISHNAKUMAR J.,

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To

The Principal District Munsif Court,
Erode



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