

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD).Nos.561 & 562 of 2018
and CMP.Nos.3029 & 3030 of 20181.C.K.Pushparani
2.Kasthuribai

.. Petitioners in both CRP's

Vs

Indirani Ammal (Died)
Nataraj (Died)
1.Gomathi
2.Krishnakumar
3.Rukmangathan
4.Iswaria
S.Kannappan (Died)
5.Victoria
6.K.Kotti
7.K.Kottiammal
8.K.Kottirajan
9.K.Ravi
10.K.Sekar
11.K.Vivekanandan

.. Respondents in both CRP's

COMMON PRAYER

Civil Revision Petitions filed under Article 227 of the
Constitution of India against the order dated 16.12.2017 passed by the
District Munsif, Thiruvotriyur, Thiruvallur District in I.A.Nos.1257 & 1258

of 2017 in I.A.No.460 of 1999 in O.S.No.97 of 1997 filed by the petitioners.

For Petitioners : Mr.C.Jayaprakash
(in both CRP's)

COMMON ORDER

According to the revision petitioners, one Kannappan, respondents 5 to 11 herein have filed a suit in OS.No.97 of 1997 for ejectment. Admittedly, the first and second petitioners herein have cross-examined PW1 and RW1. Thereafter, the revision petitioners have filed the instant applications in IA.No.1257 & 1258 of 2017 in IA.No.460 of 1999 to reopen and recall PW1 and RW1 for cross-examination. Counter statement has been filed by the respondents 1 to 4 herein before the court below by stating that the revision petitioners have filed the instant applications without filing an application, after the evidence of the petitioner and respondent has been completed and posted for arguments. After considering the contentions of both parties, the court below has dismissed the said applications. Against the said order, the revision petitioners have filed the present Civil Revision Petitions before this Court.

2. The learned counsel for the revision petitioners would submit that the revision petitioners have filed the present applications

only to reopen and recall PW1 and RW1. If the said applications are not allowed, the revision petitioners would be put to irreparable loss. Hence, the orders of the court below are liable to be set aside.

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

4. On perusing the orders of the court below, it is seen that after considering the contentions of both parties, the court below has dismissed the instant applications by holding that the revision petitioners have filed the instant applications without mentioning any reasons to reopen and recall PW1 and RW1 when the suit has been posted for arguments.

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 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".

6. It is also useful to extract the decision of this 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.

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 Stage Legal Services Authority. If the amount is not deposited, the

right of defence to examine its Witnesses shall stand foreclosed.

7. Hence, in the light of the decisions cited supra and in view of the above said facts and circumstances of the case, this Court does not warrant to interfere with the orders passed by the court below and the Civil Revision Petitions are liable to be dismissed. However, it is made clear that the observations made in the orders in IA.Nos.1257 & 1258 of 2017 shall not be influenced the trial court at the time of trial deciding the suit.

8. With above observations, the Civil Revision Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

20.02.2018

Speaking/Non-Speaking order

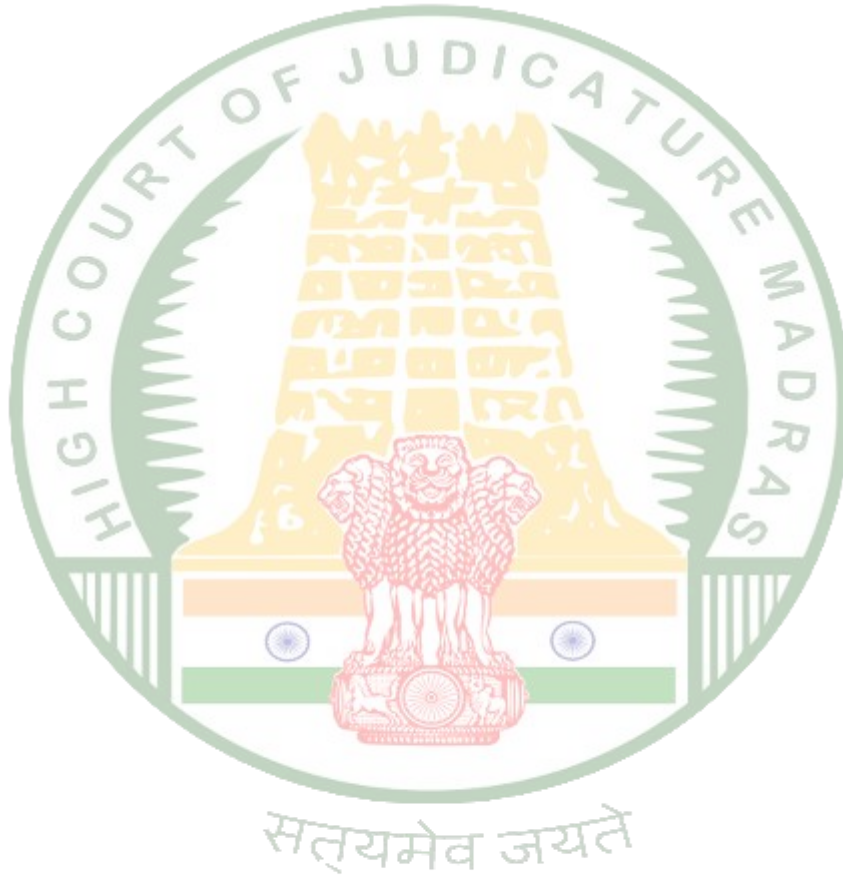
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To

The District Munsif Court,
Thiruvotriyur,
Thiruvallur District.



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D. KRISHNAKUMAR J.,

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