

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP.No.785 of 2018
and
CMP.No.4334 of 2018

1.N.Kasturi
2.N.Kalaivanan

.. Petitioners

Vs

1.T.Saravanan
2.T.Kamakshi
3.N.Gajalakshmi
4.T.Sumathi
5.S.Lavanya
6.M/s.Alwin & Co,
No.260, Thambuchetty Street,
Chennai 600 001.
7.D.R.Rajendran
8.A.Rajaraman

.. Respondents

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 20.11.2017 and made in I.A.No.10790 of 2017 in O.S.No.13467 of 2009 on the file of the XIII Assistant City Civil Judge, Chennai.

For Petitioners : Mr.A.Chidambaram

ORDER

According to the revision petitioners, the revision petitioners herein have filed a suit in OS.No.13467 of 2009 regarding mortgage. In the aforesaid suit, the evidence was commenced. The suit was filed in the year 2009 and PW1 was examined as 09.08.2015 and plaintiff side evidence was closed on 06.01.2016. After DW1 was examined and during that stage, the third plaintiff was impleaded as a legal representative of the deceased / the first plaintiff. The evidence of the defendants was closed on 20.07.2017 and posted for arguments. At that stage, the present application was filed to recall DW1 and the same was also allowed. Pending the arguments from 24.07.2017 to 03.08.2017, the revision petitioners filed the present application. The learned counsel for the revision petitioners would submit that there is no delay on the part of the revision petitioners to file the said application and the present application was filed by the revision petitioners to issue Subpoena to call for any official witness to let in evidence in respect of the particular issue. But the same was dismissed by the court below. Therefore, the order of the court below is liable to be set aside.

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

3. 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".

4. 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.

5. Therefore, in the present case on hand, the plaintiff's side evidence and defendant's side evidence was concluded and posted for arguments. In fact, the court below has stated the application in IA.No.6056 of 2017 filed by the revision petitioners to recall DW1 was also allowed. Thereafter, again the present application filed by the revision petitioners shows the revision petitioners have not placed any materials to show the delay in filing the application and the said application has been filed after seven years. The trial was commenced

in the year 2015. The present application has been filed after PW1 examined on 09.08.2015 and the plaintiff side evidence was closed on 06.01.2016. Therefore, there is no satisfactory reason and there is no force on the contention of the revision petitioners to set aside the order passed by the court below. In the light of the facts of the case and the decisions cited supra, the order of the impugned order passed by the court below is sustainable. Hence, there is no warrants to interfere with the orders passed by the court below and the Civil Revision Petition is liable to be dismissed.

6. With above observations, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

02.03.2018

Note : Issue order copy on or before 28.04.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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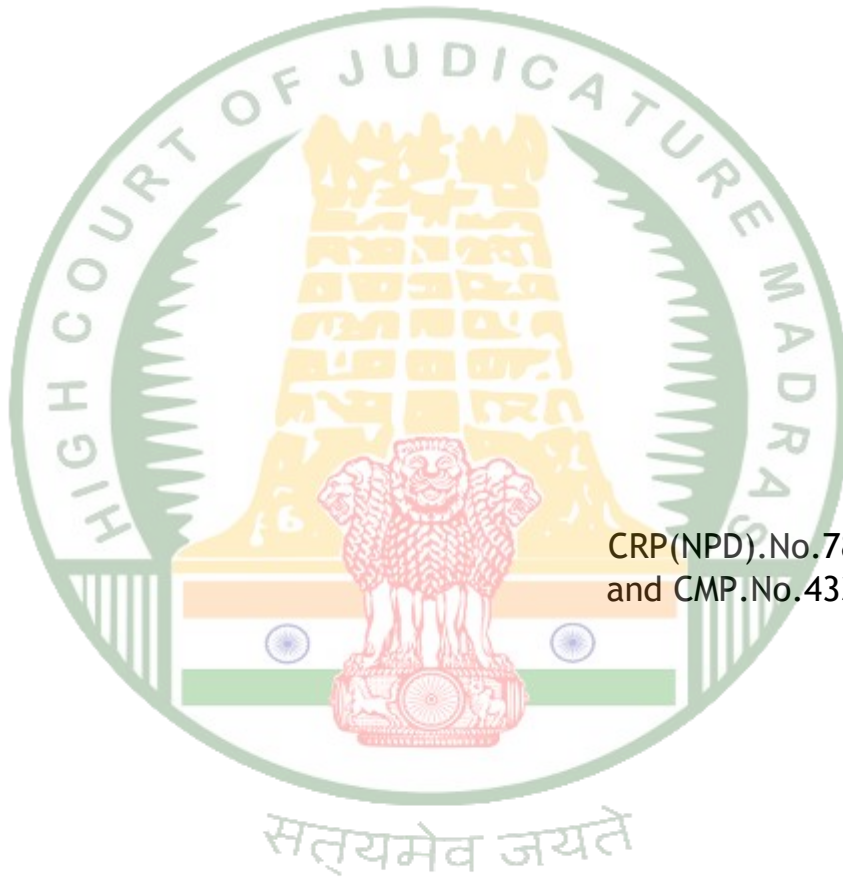
The XIII Assistant City Civil Judge,
Chennai.



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D. KRISHNAKUMAR J.,

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