

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

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

CRP(PD).No.83 of 2018

1.Krishnaveni
2.M.Markandan
3.E.Subramani

.. Petitioners

Vs

Vijaya

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the order in IA.No.375 of 2017 in OS.No.49 of 2000 on the file of District Munsif Court, Arakonam dated 20.11.2017.

For Petitioners : Mr.R.Balasubramanian

ORDER

सत्यमेव जयते

According to the revision petitioners, the respondent has filed a suit in OS.No.49 of 2000 before the District Munsif Court, Arakonam for permanent injunction against the revision petitioners on the basis of alleged fraudulent and sham deed executed by her mother Savithri. The aforesaid suit was decreed in the year 2008. Thereafter, the revision petitioners have preferred an appeal before

the Sub Court, Arakonam and the same was allowed and remanded to the trial court. At this stage, the revision petitioners have filed an application to implead mother of the plaintiff viz, Savithiriammal and also Sub-Registrar, Arakonam and the same was dismissed. Aggrieved by the same, Civil Revision Petition was preferred before this Court and the same was also dismissed. In the meantime, the case was posted for defendant side evidence. At this stage, the instant applications have been filed to re-open the plaintiff side evidence and to recall PW1 for further cross examination with respect to the sham and nominal gift deed executed by the plaintiff's mother. After considering the counter statement filed by the respondents, the trial court dismissed the aforesaid applications. Therefore, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit that the instant applications have been filed by the revision petitioners to re-open the plaintiff side evidence and to recall PW1 for further cross examination with respect to the sham and nominal gift deed executed by the plaintiff's mother. Therefore, no prejudice would be caused to the respondent, if the applications are allowed.

3. The revision petitioners have relied upon the decision of the Hon'ble Supreme Court in the case of *K.K.Velusamy Vs. N.Palanisamy* reported in **(2011) 11 SCC 275**, wherein it has been held that "court can exercise its discretion to permit reopening of evidence and / or recalling of witnesses for further examination / cross-examination after evidence led by parties is concluded and arguments have been commenced or even when arguments have concluded and case has been reserved for judgment".

4. Heard submission of learned counsel for petitioner and perused available materials on record.

5. On perusal of the materials, the petitioner filed the written statement in the year 2002. Subsequently, the suit in OS.No.49 of 2000 decreed on 12.06.2008. Challenging the aforesaid judgment and decree, the revision petitioner preferred an appeal in AS.No.80 of 2008 before the Subordinate Court, Ranipet. The aforesaid appeal was allowed by the Appellate court and remanded to the District Munsif Court, Arakonam, with a direction, the petitioner should produce the evidence within two weeks time. The petitioner have not produced any materials before the trial court, nor filed any application within the said period. After having lost the opportunity

has granted by the Appellate court and also subsequently before the trial court, the present application has been filed to recall PW1 for further examination. Even, according to the petitioner, the aforesaid case was posted on 22.02.2008 and posted for arguments on 26.02.2008 for the reason stated in the affidavit, that no defendant side evidence produced. Thereafter, posted for arguments on several occasions and finally on 09.06.2008 and thereafter posted for judgment on 13.06.2008 and suit was decreed. Challenging the aforesaid order, the petitioner has filed an appeal in AS.No.80 of 2008. According to the learned counsel for the revision petitioner, the aforesaid appeal suit was allowed on 09.12.2015 with observation that both the parties appear before the trial court on 18.01.2016. Application has been filed in IA.No.373 and 374 of 2017 to reopen plaintiff side evidence and recall PW1 to adduce evidence with regard to sham document of settlement deed executed in favour of the respondent by her mother Savithri by including property of the petitioner purchased by her mother. The instant application in IA.No.375 of 2017 filed by the petitioner to issue summons to Smt.Savithri and to give evidence and produce sham document of gift deed which executed in her favour on 12.04.2000 to confirm the genuineness of the same. The said application was dismissed by the court below, by observing the settlement deed is marked as in the list

of document as Ex.A3, after completing the cross examination of the plaintiff and the respondent side evidence, filing the application to issue summon to the mother of plaintiff with respect to the gift settlement deed is not permissible. Therefore, the learned District Munsif, Arakonam has dismissed the aforesaid application.

6. From the above facts, the petitioner filed an application, after evidence is completed and to seek to issue summon to the mother of the plaintiff with respect to the settlement deed at the belated stage. Further the petitioner has already filed an appeal against the Judgment and Decree passed in OS.No.49 of 2000 on 13.06.2008, the appeal suit was allowed on 09.12.2015 and remanded to the trial court and proceed with the suit. On perusal of the counter statement filed by the petitioner in the aforesaid IA, by submitting that the settlement deed dated 12.04.2000 was executed in favour of the petitioner by her mother Savithiri Ammal has been filed along with the plaint. Therefore, sufficient opportunity was granted to the petitioner for adducing evidence before the court below. The present application filed by the petitioner is belated, while allowing the appeal, in the Appeal suit, the Appellate court has granted two months time for producing oral and documentary evidence in the aforesaid suit. The petitioner has not chosen to approach the court below to file an

application within the stipulated time and no order has been obtained for extension of time for filing the further documents or let in evidence or examine the evidence before the court below. The present application has been filed by the petitioner. The petitioner has elaborately cross examined the plaintiff and the plaintiff side evidence by taking several hearings. Therefore, there is no sufficient reason in the affidavit to allow the application.

7. In the case of ***Ram Rati Vs. Mange Ram (dead) through legal representatives*** reported in ***(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".

8. In the case of **Gayathri Vs. M.Girish** reported in **2017 (4) CTC 321**, 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 State Legal Services Authority. If the amount is not deposited, the right of defence to examine its Witnesses shall stand foreclosed."

9. In the light of the decisions cited supra, the application

has been filed to fill up the lacunae after the evidence of the plaintiff side and defendant side concluded. Therefore, when there is sufficient opportunity granted to the petitioner, pursuant to the Judgment and Decree in Appeal suit in AS.No.80 of 2008, the petitioner has chosen to file the application at the end of evidence of the both parties. Therefore, there is no reason or no materials placed before the court by filing belated application or reasons in the affidavit to entertain the Civil Revision Petition. Hence, the order of the court below is sustained. Therefore, there is no error or illegality in the order passed by the District Munsif Court, Arakonam.

10. In fine, the Civil Revision Petition fails and Civil Revision Petition is dismissed. No costs.

13.03.2018

Speaking/Non-Speaking order

Index :Yes/No

Internet:Yes/No

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D. KRISHNAKUMAR J.,

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To

The District Munsif Court,
Arakonam



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