

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.2138 of 2016

1.P.Sivagami

2.M.Dhanalakshmi

3.M.Gajalakshmi

.. Petitioners

Vs

1.Pappathiammal

2.M.Thirunavukkarasu

3.M.Selvaraj

4.M.Anusuya

5.M.Vennila

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 04.04.2016 made in I.A.No.181 of 2015 in O.S.No.15 of 2002 on the file of the Subordinate Judge, Gudiyattam, Vellore District.

For Petitioner : Mr. T.Dhanyakumar

For Respondent : Mr. D.Raja Gopal
for R2

No Appearance
for R.1, R.3 to R.6.

ORDER

This revision petition has been filed to set aside the fair order and decretal order dated 04.04.2016 made in I.A.No.181 of 2015 in O.S.No.15 of 2002 on the file of the learned Subordinate Judge, Gudiyattam, Vellore District.

2. According to the petitioners, the petitioners filed a suit seeking for partition and the said suit was posted for evidence and after completion of evidence, posted for arguments. At this stage, the petitioner filed I.A.No.181 of 2015 seeking a direction to reopen the case to recall D.W.1, D.W.2, and D.W.3 for further cross examination on the petitioners' side and the said I.A was dismissed by the Court below on 04.04.2016. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3.The learned counsel for the petitioners further submitted that due to family circumstances, the petitioners could not present on the date of cross examination of the above said witnesses. Therefore, the petitioners filed I.A.No.181 of 2015 for the afore stated relief. The learned counsel further submitted that if the application is allowed, no prejudice would be caused to the respondents. Moreover, the petitioner came to know the alleged Will of the respondents recently. Therefore an opportunity shall be granted to the petitioner to cross examine D.W.1, D.W.2 and D.W.3.

4.The learned counsel for respondents 1, 3 to 6 submitted that the petitioners filed I.A.No.181 of 2015 with malafide intention to drag on the proceedings of the suit. Hence, the Civil Revision Petition is liable to be dismissed.

5.This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6.This Court relied on the decision of the Hon'ble Supreme Court in **Ram Rati vs. Mange Ram (D) through L.R.s and others [2016 (5) CTC 555]**, wherein paragraphs 18 and 20 read as follows:

"The settled legal position under Order 18, Rule 17, read with Section 151 of the C.P.C., being thus very clear, the impugned Orders passed by the Trial Court as affirmed by the High Court to recall a Witness at the instance of the respondent "for further elaboration on the left out points", is wholly impermissible in law.

We are informed that during the pendency of the Appal, the evidence has been closed and what remains is only the final arguments. In view of the above, we direct the Trial Court to dispose of the Suits expeditiously and preferably within one month from the date of receipt of a copy of this Order."

7.This Court further relied on the decision of the Hon'ble Supreme Court in **Gayathri Vs. M.Girish [2017 (4) CTC 321]**, wherein paragraph 8 reads as follows:

"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 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 [2 (2013) 14 SCC 18] 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 CPC.”

8. On a perusal of records it is seen that no satisfactory reason has been given in the affidavit to allow the application.

9. Further, considering the facts and circumstances of the case, submissions made by the learned counsel for both sides and also in the light of the decisions cited *supra*, this Court is not inclined to interfere with the order passed by the Court below and pass the following order:

"(i) The order dated 04.04.2016 passed in I.A.No.181 of 2015 in O.S.No.15 of 2002 on the file of the Subordinate Judge, Gudiyattam, Vellore District is confirmed.

(ii) Considering the fact that the suit is of the year 2002, the learned Subordinate Judge, Gudiyattam, Vellore District is directed to dispose of the suit in O.S.No.15 of 2002 on or before 30.06.2018.

(iii)The civil revision petition is dismissed. No order as to costs. "

20.02.2018

Index : Yes/ No
Speaking order/ Non speaking order
cla

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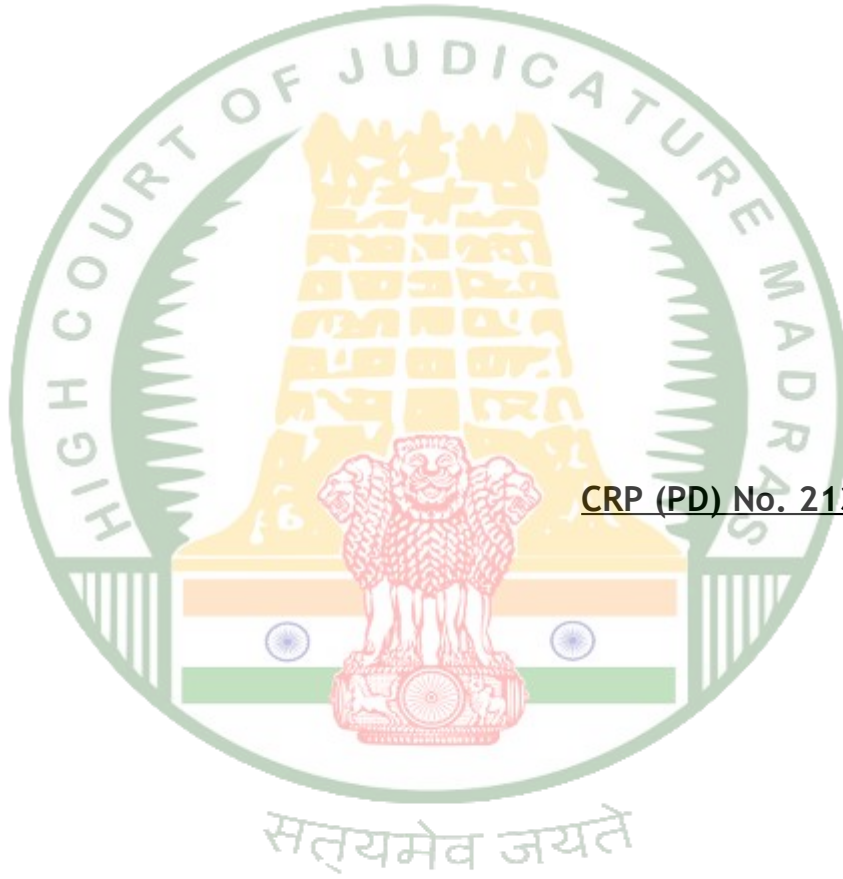
The Subordinate Judge,
Gudiyattam,
Vellore District.

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D. KRISHNAKUMAR J.,

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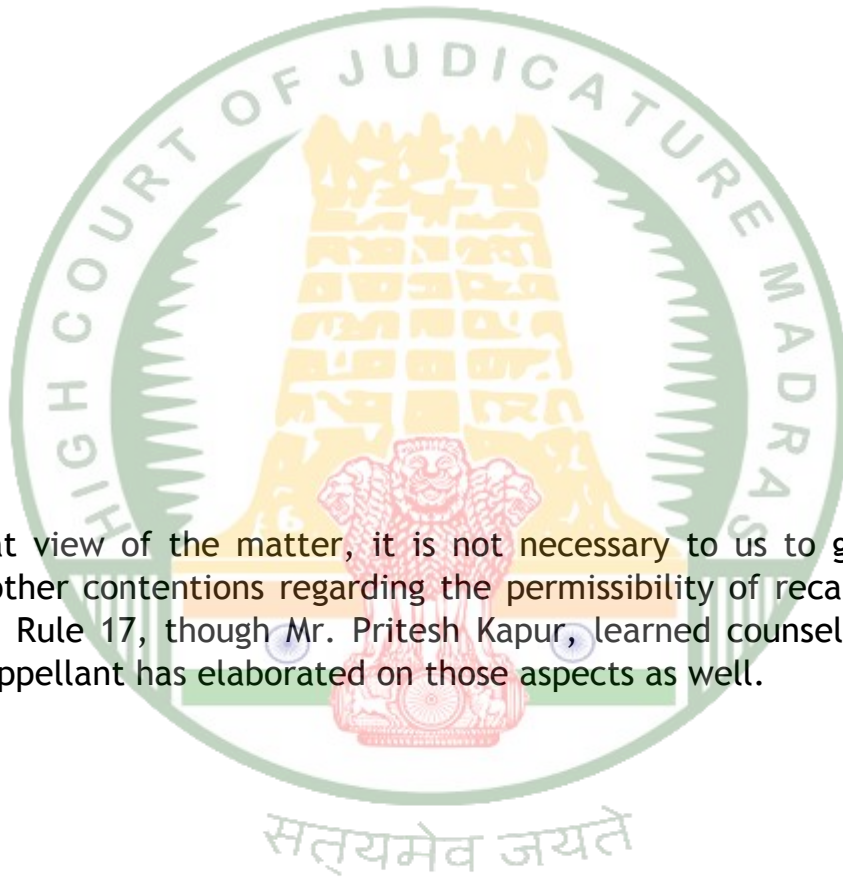


CRP (PD) No. 2138 of 2016

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20.02.2018

8. In that view of the matter, it is not necessary to us to go into the various other contentions regarding the permissibility of recalling under Order 18 Rule 17, though Mr. Pritesh Kapur, learned counsel appearing for the appellant has elaborated on those aspects as well.



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