



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) Nos.340 to 342 of 2018

1. Jensarick Thomas
2. Rasika @ Jeena
3. Kamini Devi ... Petitioners/Petitioners/Defendants

-vs-

1. Mephal
2. Frederickkranadie ... Respondents/Respondents/Plaintiffs

Prayer in C.R.P. (MD) 340/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the civil revision petition by setting aside the fair Order and Decreetal order passed in I.A.No.184 of 2017 in O.S.No.21 of 2016 dated 16.12.2017 on the file of the III Additional District Court, Tirunelveli.

Prayer in C.R.P. (MD) 341/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the civil revision petition by setting aside the fair Order and Decreetal order passed in I.A.No.185 of 2017 in O.S.No.21 of 2016 dated 16.12.2017 on the file of the III Additional District Court, Tirunelveli.

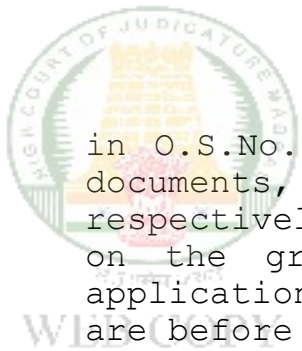
Prayer in C.R.P. (MD) 342/2018: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the civil revision petition by setting aside the fair Order and Decreetal order passed in I.A.No.186 of 2017 in O.S.No.21 of 2016 dated 16.12.2017 on the file of the III Additional District Court, Tirunelveli.

For Petitioners : Mr.S.Meenakshi Sundaram, Senior Counsel
in all petitions Mr.N.GA.Natraj

For Respondents : Mr.H.Arumugam
in all petitions

C O M M O N O R D E R

The revision petitioners are the defendants in O.S.No.21 of 2016 on the file of the III Additional District Court, Tirunelveli and in the suit, the plaintiffs/respondents herein sought for partition, etc. During pendency of the suit, revision petitioners / defendants took out three applications in I.A.Nos.184 to 186 of 2017



in O.S.No.21 of 2016 for condoning the delay in filing additional documents, reopening and recalling D.W.1 for examination respectively. Those applications were dismissed by the Trial Court on the ground that specific reasons were not assigned in the applications and challenging the same, the petitioners / defendants are before this Court.

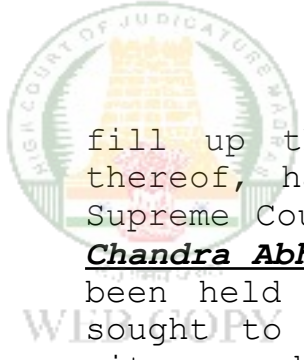
2. It is the main case of the revision petitioners that as per the provisions of Order XVIII Rule 17 CPC, power is vested with the Court to recall any witness either on its own motion or on the application filed by the parties to the suit. But, the Trial Court, instead of exercising its discretionary power, has simply dismissed the application. It is the further case of the revision petitioners that if the delay is not condoned and the vital documents are not permitted to be marked and D.W.1 has not been examined in connection with the said documents, much prejudice would be caused to the defendants and for that purpose, reopening of the case is inevitable. It is further stated that it is a mandate on the part of the Trial Court to ensure the extension of balance of convenience on both sides and the refusal of the Trial Court in condoning, reopening and recalling of D.W.1 will definitely be prejudicial to the defendants and therefore, the said orders need the intervention of this Court for rendering substantial justice to the defendants.

3. Learned counsel for the plaintiffs/respondents herein have strenuously contended that the main intention of the petitioners is to drag on the proceedings. The defendants have not stated the genuineness of the documents sought to be produced and whole exercise of the defendants is only to fill up the lacuna, which is nothing, but an abuse of process of law. There is no pleading raised with respect to the subject document in the written statement and as such, seeking permission to mark the documents is against the provisions of law and for that purpose, there is no necessity to recall and reopen the entire case. Therefore, it is prayed for dismissal of these civil revision petitions.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. The revision petitioners / defendants have invoked several provisions of law in support of their respective claim. In the plaint, it is averred that the plaintiffs and the 1st defendant are each entitled to undivided 1/3 share in the schedule property and are in joint possession; that there was an unregistered agreement for partition of the suit and since the earlier settlement was not fructified as agreed, they had filed the suit.

6. Learned counsel for the respondents/plaintiffs has contended that the petitioners herein should not be permitted to



fill up the lacuna by allowing these petitions and in support thereof, has placed much reliance on the decision of the Hon'ble Supreme Court in the case of Vadiraj (dead) through LRS vs. Sharad Chandra Abhaker Gogate, reported in 2009 (4) SCC 410, wherein it has been held that the provisions of Order 18 Rule 17 CPC cannot be sought to be used to fill up the omission in the evidence of a witness, who has already been examined.

7. It is seen from the orders of the Trial Court that the case was posted for examination of witnesses on the side of the defendants and after completion of their examinations, the case is pending for argument of the learned counsel for the plaintiffs. It is pertinent to mention here that to err is human and the inadvertent omission cannot be taken as a serious mistake committed by the defendants in not examining D.W.1 and not marking the documents on earlier occasion and perhaps, they would not have obtained the documents at the relevant point of time. In the application filed by the defendants itself, it has been averred that in the event of non examination of D.W.1 on the documents, they will be put to irreparable loss, injury and hardship. Therefore, finding much force in the contention raised by the learned counsel for the petitioners and to meet out the ends of justice, this Court is of the view that the orders of the Trial Court are liable to be set aside.

8. In the result,

- a) these Civil Revision Petitions are allowed,
- b) the separate orders dated 16.12.2017 passed in I.A.Nos.184 to 185 of 2017 in O.S.No.21 of 2016 by the learned III Additional District Court, Tirunelveli, are hereby set aside;
- c) the learned III Additional District Judge, Tirunelveli is directed to recall, reopen and receive the case documents filed by the petitioners in I.A.Nos.184 to 186 of 2017 in O.S.No.21 of 2016;
- d) the plaintiffs/respondents herein are given liberty to raise their objections at the time of marking those documents;
- e) the Trial Court is further directed to complete the entire proceedings within a period of four weeks from the date of receipt of a copy of this order and dispose of the suit within three months thereafter.

No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS-ii)



To:

1. The III Additional District Judge,
Tirunelveli.

WEB COPY

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC To MR.N.GA.NATRAJ, Advocate SR. NO.73981

+1 CC To MR.H.ARUMUGAM, Advocate SR. NO. 73888

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