



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P.(MD).No.815 of 2018 and
C.M.P.(MD)Nos.3625 & 6261 of 2018

R.Thayah Nayakee

... Petitioner/1st Respondent/
Plaintiff

Vs.

1. S.Maragatham

2. Minor S.Kanagadurga

(Minor respondent represented
through her mother and natural
guardian 1st respondent herein)
(represented through their Power Agent
Rajaguru)... Respondents 1 & 2/
Petitioners 1 & 2/
Defendants 4 & 5

3. M.Irulayee

4. Muthammal

... Respondents 3 & 4/
Respondents 2 & 3/
Defendants 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records on the file of the VI Additional District Judge, Madurai, made in I.A.No.185 of 2018 in O.S.No.28 of 2013 and to set aside the fair and decreetal order dated 08.03.2018.

For Petitioner	: Mr.S.Parthasarathy,
	for Mr.D.Rameshkumar.
For R-1 & R-2	: Mr.G.Prabhu Rajadurai
For R-3	: No appearance.

ORDER

The plaintiff in O.S.No.28 of 2013 on the file of the VI Additional District Judge, Madurai, is the Revision petitioner herein. It is a suit for partition and separate possession. The properties belonged to one Ponnaiah Pillai. He died leaving behind four daughters and one son Sivasubramanian. The plaintiff Thayah Nayakee was the second daughter. The said son died in the year 2012 leaving behind his wife Maragatham and a minor daughter Kanagadurga. The suit was instituted in February 2013 against the legal heirs of Sivasubramanian. Trial was conducted on either side and evidence was closed. Thereafter, the matter was posted for arguments. After respondents 1 and 2 herein had virtually concluded their arguments, I.A.No.185 of 2018 was filed for reopening and for examining the



thumb impression expert. The said Interlocutory application was allowed by order dated 08.03.2018. Questioning the correctness of the said order, the plaintiff has filed this Civil Revision petition.

2. The learned counsel appearing for respondents 1 and 2 herein would contend that the defendants have opposed the suit claim on the ground that the plaintiff had already released and relinquished her share in the suit property by executing a document in the year 1985. However, the said claim was contested by the plaintiff. Therefore, the contesting defendants took out an application for referring the thumb impression for expert opinion. The said Interlocutory application was allowed. The plaintiff also affixed her thumb impression in the Court. Report was received from the expert. But then, for reasons best known, the contesting defendants did not choose to mark the said report in evidence. After the evidence was closed on the side of the defendants, the matter was posted for arguments. The counsel for the contesting defendants also advanced their documents. When they wanted to place reliance on the said expert report, the Court below declined to look into the same, as it was not marked in evidence. Thereafter, the present Interlocutory application was filed.

3. The learned counsel appearing for the contesting defendants would submit that in the interest of justice the order passed by the Court below ought to be sustained. This is all the more so because, a reference has already been made to the release deed said to have been executed by the plaintiff in their written statement.

4. As rightly contended by the learned counsel appearing for the Revision petitioner, the affidavit filed in support of I.A.No.185 of 2018 is totally silent as to why the counsel for the defendants made an endorsement closing their side and what necessitated the filing of the application for reopening. The Hon'ble Supreme Court in the decision reported in (2011) 11 SCC 275 (K.K.Velusamy V. N.Palanisamy) has held as follows:-

"14. The amended provisions of the Code contemplate and expect a trial Court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice,



subject to such terms as the Court may deem fit to impose.

15. The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the Court will not entertain any interlocutory application for any kind of relief. The need for the Court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the Court, or if interests of justice require the Court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of Court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code."

5. The Hon'ble Supreme Court specifically held that if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the Court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice.

6. In this case, the expert report was received much earlier. No reason has been set out in the affidavit filed in support of I.A.No.185 of 2018 as to why it was not marked in evidence by the defendants during the appropriate time. The affidavit filed in support of I.A.No.185 of 2018 is absolutely silent as to why the defendants had made endorsement closing their side. Therefore, the contesting defendants had not made out any exceptional case for invoking the inherent powers of the Court below. This aspect of the matter has not at all been appreciated by the Court below. The Court below ought to have seen as to whether a case has been made out for reopening and to what extent further evidence should be permitted. Since the binding ratio set out in the aforesaid decision of the Hon'ble Supreme Court has not been considered by the Court below, the order impugned in this Civil Revision petition is set



aside. Of course, it is open to the defendants to sustain their defence based on the other materials available on record.

7. With these observations, the Civil Revision petition stands allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

/True Copy/

Sd/-

Assistant Registrar(Crl.side)

Sub Assistant Registrar(CS-III)

To

1. The VI Additional District Judge,
Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr.D.Rameshkumar, Advocate, SR.No.87767

+1CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No.87890

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