



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
C.R.P.(MD) (PD) Nos.1856 to 1858 of 2014

and

M.P.(MD) No.1 of 2014

1.Nargish Banu

2.Syed Fathima

... Petitioners in all C.R.Ps.,

Vs.

Mohamed Sherif

... Respondent in all C.R.Ps.,

Common Prayer:-Civil Revision Petitions filed under Article 227 of the Constitution of India, to allow the civil revision petitions against the fair and decreetal order passed in I.A.Nos.159, 160 and 161 of 2014 in O.S.No.401 of 2006 dated 17.06.2014 on the file of II Additional Sub Court, Madurai.

For Petitioners

in all C.R.Ps., : Mr.R.Aravindan

For Respondent

in all C.R.Ps., : Mr.S.A.Ajmal Khan

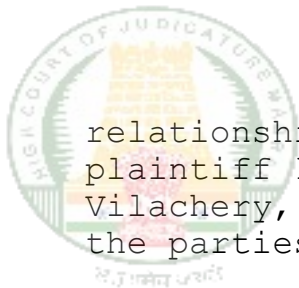
COMMON ORDER

These civil revision petitions have been filed against the order passed in I.A.Nos.159, 160 and 161 of 2014 in O.S.No.401 of 2006 dated 17.06.2014 on the file of II Additional Sub Court, Madurai.

2.The revision petitioners are the defendants in the suit in O.S.No.401 of 2006. The respondent herein filed a suit in O.S.No.401 of 2006 before the II Additional Sub Court, Madurai, for partition and separate possession and for other consequential reliefs.

3.The suit was filed in the year 2006 and the written statement was also filed by the first defendant. After commencement of trial and examination of witnesses on the side of plaintiff, the plaintiff filed Interlocutory Applications in I.A.Nos.159, 160 and 161 of 2014 to reopen the plaintiff side evidence for the purpose of examination of further witnesses, to recall D.W.2. namely, the first defendant / first petitioner for further cross examination and to reopen the evidence under Section 151 CPC. All the three Interlocutory Applications were allowed by the II Additional Sub Court, Madurai, and the defendants challenged the said order before this Court.

4.In I.A.No.159 of 2014 filed by the respondent to reopen the plaintiff's evidence, it is stated that the first defendant, who was examined as D.W.2, during cross-examination of D.W.2, denied the relationship between the plaintiff and her husband. Since the



relationship is denied, it is stated by the plaintiff that the plaintiff has to examine the President, Secretary of Muslim Jamath, Vilachery, who are competent to speak about the relationship between the parties.

5. In I.A.No.160 of 2014, the plaintiff sought to recall D.W.2 / first defendant for further cross examination and to mark the document styled as partition deed dated 31.08.1988. It is stated that the partition document would show the relationship between the parties and that therefore, it is an important document, which is required to be marked through D.W.2., by way of further cross examination.

6. I.A.No.161 of 2014 has been filed to reopen the evidence to examine other witnesses.

7. All the Interlocutory Applications were allowed on terms and that the respondent, who is the petitioner in all the Interlocutory Applications was directed to pay a sum of Rs.1,000/- in each application to the respondent as cost by order dated 02.06.2014. Thereafter, the matter was called on 10.06.2014. On 10.06.2014, the petitioners herein refused to receive the cost from the respondent herein. Hence, the Court directed the respondent to deposit the cost into Court. After depositing the cost into Court, the petition was allowed. The petitioners have only challenged the order passed by the II Additional Sub Court, Madurai, dated 17.06.2014, regarding compliance of the order to pay the cost. However, the order dated 02.06.2014 is not challenged.

8. Be that as it may, the only contention of the learned counsel for the petitioners is that the Court has not assigned any proper reason for allowing all the applications. It is contended that the respondent has not given any valid explanation for non production of the document and that he cannot be permitted to mark the document at a later stage after reopening the case.

9. The learned counsel appearing for the petitioners further relied upon a judgment of the Hon'ble Supreme Court in the case of Bagai Constructions vs. Gupta Building Material Stores reported in 2013 (14) SCC.

10. The Court may not exercise its discretion to permit reopening of the case or recall the witnesses after closure of evidence as a matter of routine. The view expressed by the Hon'ble Supreme Court in the above judgment is well accepted by this Court in several judgments. The judgment of the Hon'ble Supreme Court above referred to refers to another judgment of Hon'ble Supreme Court in the case of K.K.Velusamy Vs. N.Palanisamy reported in 2011 SCC 275, wherein, it has been held that the plaintiff should be given an opportunity to put forth additional evidence and to recall the witnesses to prove his case if any need arises and other side should be properly heard. Hence, the question whether it is



necessary to reopen the evidence is required to be decided having regard to the facts and circumstances of a particular case.

11. Accepting the principles, which have been followed by the Hon'ble Supreme Court, this Court is of the view that in this case, the petition filed by the plaintiff to reopen the case, to recall D.W.2. for further cross examination, to mark the documents of partition and to permit the petitioners to adduce further evidence is required in the interest of justice. However, the plaintiff can examine any one as further witness only to prove the relationship between the plaintiff and the first defendant and not for any other purpose or any other witnesses.

12. The permission granted to the plaintiff to recall D.W.2 also is confined to mark the partition deed relied upon by the plaintiff. It is open to the petitioners to raise their objections regarding the partition deed appropriately.

13. With the above observations, these civil revision petitions are disposed of. It is stated that the suit is now been transferred to Thirumangalam Sub Court, Madurai District. Since this order is only against the order passed by the II Additional Sub Court, Madurai in I.A.Nos.159, 160 and 161 of 2014 in O.S.No.401 of 2006 filed by the plaintiff, no prejudice is likely to be caused to any one on account of transfer and no specific direction or observation is required mentioning the transfer. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The II Additional Sub Judge, Madurai.

2. The Sub Judge, Thirumangalam, Madurai District.

Copy To:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1CC to Mr.R.ARAVINDAN, Advocate, SR.No.72938

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