



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2018
(Reserved on 09.10.2017)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) Nos.1642 to 1644 of 2017
and
CMP (MD) No.9195 of 2017

Baby Rajagopal @ Baby Nagalakshmi ... Petitioner

vs.

1) Sivakumar
2) Saraswathi
3) Murugan
4) Thiraviyaraj
5) Suyambulingam
6) Rajagopal Reddiyar
7) Navashree
8) Kesava Krishna
9) Ayyappa Sankar

... Respondents

Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.07.2017 passed in I.A.Nos.227, 228 and 229 of 2017 in O.S.No.12 of 2013 on the file of the Sub Court, Valliyoor, Tirunelveli District.

For Petitioner : Mr.D.Nallathambi
For Respondent : Mr.V.Balasubramanian

COMMON ORDER

These revision petitions have been filed against the fair and decreetal order dated 05.07.2017 passed in I.A.Nos.227, 228 and 229 of 2017 in O.S.No.12 of 2013 on the file of the Sub Court, Valliyoor, Tirunelveli District.

2.The revision petitioner is the 2nd defendant. The 1st respondent is the plaintiff and respondents 2 to 9 are defendants 6 to 9, 1, 3, 4 and 5 respectively. The plaintiff filed the suit in O.S.No.12 of 2013 for declaration and permanent injunction. The defendants filed written statement and the plaintiff also filed reply statement. On the side of the defendants, DW1 to DW3 were examined. After closure of the defendants' side evidence, the suit was posted for arguments. At that juncture, the defendants 1 to 5 filed interlocutory applications in I.A.Nos.227, 228 and 229 of 2017 in O.S.No.12 of 2013 to re-open, recall DW1 and to mark 11 additional documents.



3. The revision petitioner/2nd defendant who was examined as DW1, averred that when she was cross examined, she came to know that she did not let in any documentary evidence for the questions posed to her during her cross-examination which was not wilful nor wanton. Therefore, the defendants 1 to 5 sought to re-open and recall DW1 and to mark additional documents.

4. The Trial Court dismissed the interlocutory applications holding that those interlocutory applications have been filed only to drag on the proceedings. It has been observed by the Trial Court that the revision petitioner/2nd defendant has not stated any thing about when she received the documents sought to be marked as additional evidence and she has not even whispered about the so-called documents sought to be marked when she was cross-examined by the plaintiff.

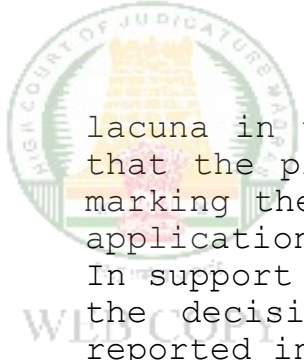
5. Aggrieved by the dismissal of the interlocutory applications, the 2nd defendant has come up with the present revision petitions.

6. The learned counsel for the revision petitioner contended that the Trial Court ignoring the fact that the proposed documents are necessary and official documents obtained under the Right to Information Act for deciding the suit, erroneously dismissed the interlocutory applications. It is further contended that the Trial Court failed to take note of the fact that the defendants' side evidence was closed only in the month of January 2017 and therefore, there is no delaying tactics on the part of the defendants 1 to 5 in filing the applications to re-open and re-call and to mark additional documents which were filed during February 2017. Therefore, the Trial Court ought to have allowed those applications.

7. In support of his contention, the learned counsel for the revision petitioner has relied upon the following judgments:-

- (i) K.K.Velusamy vs. N.Palanisamy reported in 2011-3-L.W. 738
- (ii) R.Saroja vs. P.Rajaram and others reported in 2016-2-L.W.856
- (iii) Ram Rati vs. Mange Ram (d) Through Lrs. and others reported in 2016-4-L.W.447.

8. Per contra, the learned counsel for the 1st respondent/plaintiff submitted that after closure of evidence on either side, the arguments of the plaintiff were heard and the plaintiff also filed notes of arguments. When the suit was posted for arguments of the defendants, the defendants filed I.A.No.1233/2016 to recall DW2 which was allowed with costs. Thereafter, DW2 was examined and the suit was again posted for arguments. At that juncture, the defendants 1 to 5 filed the present interlocutory applications to re-open and re-call DW1 and to mark additional documents which according to the learned counsel is nothing but an attempt to protract the proceedings and to fill up



lacuna in the evidence of the defendants. It is further contended that the proposed documents were in the custody of DW1 and without marking the same during his chief examination, he filed the present applications with mala fide intention to drag on the proceedings. In support of his contention, the learned counsel placed reliance on the decision of this Court in S.V.Matha Prasad vs. Renuka Devi reported in 2015 (1) MWN (Civil) 83.

9.Perusal of the records shows that after conclusion of arguments, notes of arguments were filed by the plaintiff. When the suit was posted for arguments of the defendants, the defendants filed I.A.No.1233/2016 to recall DW2 which was allowed with costs. Thereafter, DW2 has been examined and the suit was again posted for arguments. At that juncture, the defendants 1 to 5 filed the present interlocutory applications to re-open and re-call DW1 and to mark additional documents.

10.In my considered opinion, these revision petitions are meritless, because, it is quite apparent that despite repeated opportunities, the petitioner had not availed the same to mark the proposed documents which were well within her possession and when the matter was posted for arguments after filing of the written arguments, a petition was filed to recall DW2 and that was allowed with costs. Now the present petitions have been filed to reopen, recall and to mark additional documents have been filed to fill up the lacuna and gaps in the evidence. It is not a case where the Court has felt handicapped and needs any elucidation. When the matter was posted for arguments, it is not proper to allow the petition to mark additional documents.

11.The judgment cited by the learned counsel for the 1st respondent in S.V.Matha Prasad vs. Renuka Devi reported in 2015 (1) MWN (Civil) 83, is squarely applicable to the facts of this case. Though it has been contended by the revision petitioner that the proposed documents are necessary and official documents obtained under the Right to Information Act for deciding the suit, nothing has been mentioned as to the particulars of the documents and in what way it is connected with the suit. The intention of the revision petitioner in filing the present petitions in my considered opinion is only an attempt to protract the proceedings and to fill up lacuna in the evidence of the defendants. Hence, there is no infirmity in the impugned orders of the Court below and therefore, the interference of this Court is not necessary.

Accordingly, these Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/



To

The Subordinate Judge,
Valliyoor,
Tirunelveli District.

+1CC to Mr.D.Nallathambi, Advocate, SR.No. 42816
+1CC to Mr.V.Balasubramanian, Advocate, SR.No. 43028

order made in
CRP(PD) (MD) Nos.1642 to 1644 of 2017

bala
AM/KK/SAR 1/29.01.2018/4P/4C