



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.11.2017
Judgment on : 28.04.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.1919 of 2017(PD) and
C.M.P (MD) No.9893 2017

M.Parameswari .. Petitioner/1st Respondent/Plaintiff

Vs.

1.M.Mahalakshmi .. 1st Respondent/Petitioner/1st defendant

2.A.Savithiri Ammal

3.V.N.Rameshkanna

4.Valarmathi .. 2 to 4 Respondents/2 to 4 respondents/
2 to 4 defendants

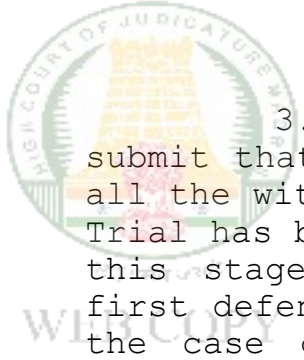
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 18.08.2017 made in I.A.No.1113 of 2016 in O.S.No.363 of 2015 on the file of the Principal Subordinate Judge, Karur.

For Petitioner : Mr.S.Manohar
For 1st Respondent : Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 18.08.2017, made in I.A.No.1113 of 2016 in O.S.No.363 of 2015 on the file of the learned Principal Subordinate Judge, Karur.

2. The second defendant as power agent of the first defendant was set ex-parte as he did not appear. 15 issues have been framed, such as the genuineness of the agreement, whether the plaintiff is entitled for the relief, etc. Trial commenced on 02.11.2016 and the plaintiff remained absent and on his petition the case has been adjourned to 07.11.2016 and the sale agreement was marked with objection on the side of the defendants and when the case was posted for cross examination, the defendants sought for permission of the Court to cross examine all the witnesses on the same date and the Court had directed him to file an application for the same, which is undisputed and the present I.A. has been filed seeking permission of the Court to cross examining all the witness on the same date, which was allowed, against which, the present Civil Revision Petition has been filed.



3. The learned Counsel for the petitioner/plaintiff would submit that the petitioner/plaintiff cannot be compelled to produce all the witnesses on the same day. He would further submit that the Trial has been commenced and P.W.1 has been examined in chief and at this stage, allowing the Interlocutory Application filed by the first defendant by the Trial Court would cause serious prejudice to the case of the plaintiff. In support of his contention, the learned counsel relied on the judgments reported in **AIR 1965 - SC - 1008 (C 52 C 161) in the case of The Municipal Corporation of Greater Bombay Vs. Lala Pancham and Others** and **2017(4) CTC 321 - in the case of Gayathri Vs. M.Girish**.

4. The learned counsel for the first defendant would submit that the suit is for specific performance of the sale deed dated 02.04.2012 and unless the first defendant cross examine the persons concerning the alleged suit sale agreement including the executant of the suit sale agreement, plaintiff, the attestors and scribe of the suit sale agreement at the same time, it will pave the way for the plaintiff to tutor other witnesses and therefore, the learned Trial Judge, after considering the facts of the case in proper perspective, allowed the Interlocutory Application and the same does not warrant any interference at the hands of this Court and relied on the judgement reported in **1993 - 1 MLJ - 617 in the case of Ramalakshmi @ Ranjitham Vs. Janaki and others**.

5. The Court considered the submissions made by the learned Counsel on either side and also perused the materials available on record in the form of typed-set of papers. The only question to be decided is whether the learned Judge was right in allowing the application of the 1st respondent to cross examine all the witnesses on the same date.

6. From perusal of the judgments produced by the learned Counsel for the petitioner, it is seen that it deals with certain limits which law places upon the powers of the Court in dealing with a case before it. Just as it is not open to a Court to compel a party to make a particular kind of pleading or to amend his pleading so as it is beyond its competence to virtually oblige a party to examine any particular witness. While, therefore, it is the duty of a Court of law not only to do justice but to ensure that justice is done and should bear in mind that it must act only according to law, not otherwise. It also speaks about the dictum laid down that the Court cannot compel any party to examine a particular witness and therefore, the said decision will not apply in the present circumstances of the case. The second decision is also only relating to delay and here the respondent has requested to examine the witnesses on the very same day and therefore, the plea taken by the petitioner is not correct, as the respondents are willing to cross-examine all the witness on the same day. The Court had not compelled the petitioner to examine a particular witness. It is for the petitioner to enquire any number of witnesses, but the respondent wants to cross examine the same witness and the Court



below has directed to cross examine all the witnesses on the same date.

7. In the present case the learned Counsel for the respondent has specifically pleaded that the agreement is not a genuine one and prays to cross examine all the witness on the same day and he would rely on the judgment reported in **1993 (1) MLJ - 617 in the case of Ramalakshmi alias Ranjitham Vs. Janaki and others**, which relates to an alleged Will. The Court itself informed the Counsel for the plaintiff that for proving the Will, all the witnesses shall be examined on the same day.

8. The Trial Court after considering the reasons put forth by the first defendant in the affidavit filed in support of the Interlocutory Application as well as considering the specific purpose for which the said application was filed, has exercised its inherent jurisdiction under Section 151 CPC and came to the conclusion that no prejudice would be caused to the plaintiff, if the witnesses are cross-examined on a single day and the same will be of useful to complete the trial of the suit in a speedy manner and the suit will be disposed of at an early date and thereby allowed the Interlocutory Application.

9. In the present case, the respondent has specifically questioned the genuineness of the agreement and therefore, he would claim that all the witnesses have to be examined on the same day and therefore, in my considered opinion no prejudice would be caused, if all the witnesses are examined on the same day and therefore, the order of the trial Court does not warrants interference.

10. In the result, finding no merit, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge, Karur.

Copy To:-

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.S.MANO HAR, ADVOCATE IN SR No. 64642

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 64593

RM

TE/SKN-RSK/SAR-4 : 22/05/2018 : 3P/6C

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Order made in
C.R.P (MD) No.1919 of 2017
28.04.2018