

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2019

PRONOUNCED ON : 03.07.2019

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(PD) Nos.1233 to 1235 of 2015
and M.P.No.1 of 2015

Ponnammal

.. Petitioner in all CRPs.

VS

1.Malaiyan
2.Arjunan

.. Respondents in all CRPs.

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 28.01.2015 made in I.A.Nos.465, 466 & 467 of 2014 in O.S.No.51 of 2008 on the file of the District Munsif cum Judicial Magistrate, Parangipettai.

For Petitioner : Mr.A.Muthukumar
For Respondents : Mr.R.Gururaj

COMMON ORDER

The present civil revision petitions have been filed to set aside the fair and decretal order dated 28.01.2015 made in I.A.Nos.465 to 467 of 2014 in

O.S.No.51 of 2008 passed the District Munsif cum Judicial Magistrate, Parangipettai.

2. The petitioner is the plaintiff in O.S.No.51 of 2008 before the District Munsif cum Judicial Magistrate, Parangipettai. According to the petitioner, the suit schedule property was purchased by her father in the year 1957. After the death of her father and mother, the plaintiff was in possession of the suit property. Thereafter, she had allowed the respondents/defendants her cousin to occupy the premise.

3. However, when she wanted to take re-possession they opposed and was therefore constrained to file above suit for a declaration of title and for recovery of possession of the suit schedule property. In the said suit, the defendants filed written statement by stating that the petitioner was not the daughter of Arumugam @ Chetty but was the daughter of one Sivakutti.

4. It is the case of the respondents that they are actually the son of the said Arumugam @ Chetty and therefore, they are the legal heirs and were in the enjoyment and possession of the suit schedule property and therefore prayed for dismissal of the suit.

5. After the issues were framed, the petitioner filed applications to reopen the evidence for marking additional documents.

6. The learned counsel for the petitioner submits that the sale deeds sought to be marked did not mention the name of Arumugam @ Chetty. The other two documents are the school certificates issued by the School Head Master, stating the defendant's father's name as Chetty which confirmed that the first defendant was not the son of Arumugam.

7. These applications were opposed and were dismissed by a common order, after referring the decision of the Hon'ble Supreme Court in ***Bagai Construction through its proprietor LalitBagai vs. Gupta Building Material Store*** (2013) 14 SCC 1. The petitioner has therefore filed the present Civil Revision Petitions before this Court.

8. I have considered the arguments advanced on either side and case laws and also perused the materials evidence available on records.

9. The learned counsel for the petitioner submits that the above decision actually comes to their rescue and therefore the Court ought not to have allowed the applications.

10. It was further submitted that the other reasons given in para No.3 of the impugned order, the petitioner did not take steps to produce the same and there was insufficient explanation given as to why it was not produced earlier is incorrect. The petitioner came to know about the existence of the documents only in the year 2013 and applied for certified copy of the sale deed and produced the same.

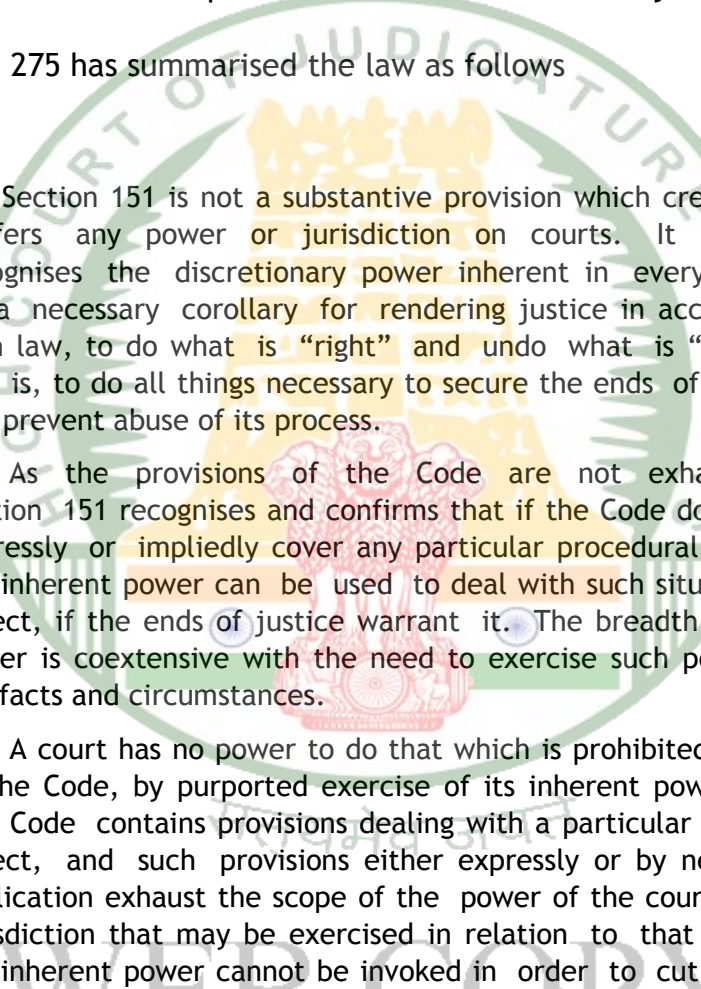
11. The learned counsel for the petitioner submits that these documents will assist the Court for a proper adjudication and would have bearing on the ultimate decision that has been arrived as to whether the respondents/defendants are indeed the children of the deceased Arumugam.

12. Per contra, the learned counsel for the respondents submitted that the impugned order does not require any interference and relied on the following cases of this Court and the Hon'ble Supreme Court:

1. **S.V.Matha Prasad vs. Renuka Devi** 2014 (6) CTC 670 (MAD)
2. **Ram Rati vs. Mange Ram and Ors** AIR 20116 SC 1343
3. **K.K.Velusamyvs .N.Palanisamy** (2011) 11 SCC 275

13. The only reason given by the Court in dismissing the application filed by the petitioner is that the documents sought to be marked ought to have been produced earlier and as they were in possession of the petitioner.

14. The Hon'ble Supreme court in **K.K.Velusamy vs .N.Palanisamy** (2011) 11 SCC 275 has summarised the law as follows

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- a. Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is "right" and undo what is "wrong", that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.
 - b. As the provisions of the Code are not exhaustive, Section 151 recognises and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is coextensive with the need to exercise such power on the facts and circumstances.
 - c. A court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or by necessary implication exhaust the scope of the power of the court or the jurisdiction that may be exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or in a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.
 - d. The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way

be in conflict with what has been expressly provided in the Code or be against the intention of the legislature.

e. While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and in the facts and circumstances of the case. The absence of an express provision in the Code and the recognition and saving of the inherent power of a court, should not however be treated as a *carte blanche* to grant any relief.

f. The power under Section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.”

15. The court further held as follows:-

“12. 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 re-opening 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 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.”

16. The decision in **K.K.Velusamy vs. N.Palanisamy** (2011) 11 SCC 275

cited by the learned counsel for the respondents was considered in **Bagai**

Construction through its proprietor Lalit Bagai v. Gupta Building Material

Store, (2013) 14 SCC 1 and in **Ram Rati vs. Mange Ram and Ors** AIR 20116 SC 1343

17. In **Ram Rati vs. Mange Ram and Ors** AIR 20116 SC 1343 while following the view laid down in **K.K.Velusamy vs. N.Palanisamy** (2011) 11 SCC 275, the court still held that the orders passed by the trial court affirmed by the High Court to recall a witness at the instance of the Respondent “for further elaboration on the left out points”, is wholly impermissible in law. A similar view was taken in **Gayathri Vs M.Girish** 2017 (4) CTC 321. The court took note of the conduct of the party and therefore stated that the application was liable to be rejected with cost. The case was adjourned seven times. The defendant had sought adjournment after adjournment for cross-examination on some pretext or the other. The trial court eventually granted permission subject to payment of costs. But the defendant still took the adjournment. The disregard shown to the plaintiff's age was held reprehensible.

18. In the facts of the present case certified and xerox copy of the sale deeds dated 17.06.1966, was obtained by the petitioner only on 08.12.2014 and it is only thereafter the petitioner filed the above application on 11.12.2014. Similarly, the other two documents viz., secondary school leaving certificate of the first respondent (first defendant) and Certificate issued by the School Head Master, are documents in possession of the

defendants/respondents. Therefore, the petitioner cannot be found fault for not producing these documents at an earlier point of time.

19. If these documents will assist the Court to arrive at a fair conclusion of disputed question of facts, these applications should have been allowed. Unless the findings of the applications were motivated with view to delay the completion of the proceedings, the Court should have allowed the applications by awarding cost for the delay.

20. In case, the applications were found to be mischievous or frivolous, or to cover up negligence or lacunae, they could be rejected with heavy costs as held by the decision of the Hon'ble Supreme Court in **Bagai Construction through its proprietor Lalit Bagai vs. Gupta Building Material Store**(2013) 14 SCC 1 .

21. In my view the applications were neither mischievous nor frivolous or were intended to cover up lacuna or negligence. Ultimately, it is the duty of the Trial Court to arrive at the truth and since the documents may bring out the truth, the court should have allowed the applications.

22. Since the suit is of the year 2008 and the applications were filed after the completion of the trial when the case was listed for arguments,

therefore, the Court ought to have merely ordered cost as held by the Hon'ble Supreme Court in **Bagai Construction through its proprietor LalitBagai vs. Gupta Building Material Store**(2013) 14 SCC 1.

23. Therefore in my view the above C.R.P's deserves to be allowed. Considering the facts and circumstances of the case, I am of the view that to meet the ends of justice, the present Civil Revision Petition can be allowed subject to payment of costs of Rs.10,000/- to the respondents.

24. The amount shall be deposited by the petitioner-plaintiff within a period of four weeks from the date of receipt of a copy of this order to the credit of O.S.No.51 of 2008 before District Munsif cum Judicial Magistrate, Parangipettai. On such deposit, the respondent shall be entitled for payment out.

25. On such compliance, District Munsif cum Judicial Magistrate, Parangipettai is directed to proceed with the trial after reopening the evidence and by allow the petitioner to mark the documents and permit the respondents for cross examination of the petitioner. Thereafter, the trial Court is also directed to complete the trial and pass a final judgment and decree within period of six months from the date of receipt of a copy of this order as the suit is of the year 2008.

C.SARAVANAN,J.

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26. The present civil revision petitions are allowed with the above observations. Consequently, connected Miscellaneous Petition is also closed.

03.07.2019

Index : Yes/No
Internet : Yes/No
Speaking : Non-speaking order
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To
The District Munsif cum Judicial Magistrate,
Parangipettai.



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Pre-delivery Common order in
C.R.P(PD) Nos.1233 to 1235 of 2015
and M.P.No.1 of 2015

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