

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM
THE HONOURABLE MR. JUSTICE C. SARAVANAN

C.R.P. (PD).Nos.1664 & 1665 of 2015
and
M.P.No.1 of 2015

1.Anandan
2.Jayakumar

... Petitioners/Plaintiffs

Vs.

1.Samiappan @ Alexandar
2.Thomas
3.Nataraj
4.Selvakumar
5.Dhanabal
6.William Raj
7.Semalai Gounder

... Respondents/Defendants

Prayer in C.R.P (PD).No.1664 of 2015: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.02.2015 made in I.A.No.470 of 2014 in O.S.No.306 of 2010 on the file of the Second Additional District Munsif Court, Erode.

Prayer in C.R.P (PD).No.1665 of 2015: Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.02.2015 made in I.A.No.471 of 2014 in

O.S.No.306 of 2010 on the file of the Second Additional District Munsif Court, Erode.

For Petitioners : Mr.N.Manokaran
For RR1 to 4, R6 & R7 : Mr.S.Kaithamalai Kumaran
For R5 : No appearance

COMMON ORDER

The present Civil Revision Petition is directed against the Fair and Decretal Order dated 03.02.2015, passed by the II Additional District Munsif Court, Erode in I.A.Nos.470 and 471 of 2014 in O.S.No.306 of 2010.

2. By the impugned order, the Court has declined to reopen the case to recall DW1 for further cross-examination by the petitioners/plaintiffs in the above suit.

3. The above suit was filed for a Mandatory Injunction and a Permanent Injunction against the respondents/defendants. When the case was listed for arguments, the petitioners filed I.A.Nos.470 and 471 of 2014. These applications were dismissed by the Trial Court.

4. Aggrieved by the same, the petitioners is before this Court. The learned counsel for the petitioners relied upon the following decisions of the Honourable Supreme Court in the case of **K.K.Velusamy Vs N.Palanisamy**, 2011 (11) SCC 275 wherein, in Paragraph (15) the Court held as follows:

“15. 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 judgments 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 not 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.

In the above case, this Court recognized the bar on the Trial Court to entertain application and exception to above rule. This Court also held that, 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. Per contra, the learned Counsel for the respondents placed before this Court the decisions of the Honourable Supreme Court in the following two cases:

a. **Gayathri Vs M.Girish**, 2017 (4) CTC 321 and

b. **Ram Rati Vs Mange Ram (Dead) through legal representatives and others**, 2016 (11) SCC 296.

In the case of **Ram Rati Vs Mange Ram (Dead) through legal representatives and others**, 2016 (11) SCC 296, the Court held as follows:

“18. The settled legal position under Order 18 Rule 17 read with Section 151 of C.P.C, being thus very clear, the impugned orders passed by the Trial Court as 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.”

6. I have considered the rival submissions.

7. In both these cases, the Honourable Supreme Court has recognized the limitations of the Trial Courts to entertain application to reopen evidence, to recall a witness for further examination at the stage of commencement of arguments. The lower Court has given its reason in the impugned order. It has noted that in the affidavit the petitioner has not assigned any reason for allowing this petition and the petitioners had numerous opportunity at the earliest point of time to file this kind of petition and the application was belated. It was long after the evidence was closed. Therefore, there is no points in interfering with the impugned order at this stage.

8. I am therefore of the view, that this Civil Revision Petition is liable to be dismissed.

9. As the suit is of the year 2010 and has been kept pending in view of the present Civil Revision Petition, the II Additional District Munsif Court, Erode is directed to dispose O.S.No.306 of 2010 within a period of six months from the date of receipt of a copy of this order.

C. SARAVANAN, J.

arb

10. These Civil Revision Petitions are dismissed with the above directions. No Costs. Consequently, the connected Miscellaneous Petition is also closed.

01.07.2019

arb

Index : Yes/No

Internet : Yes/No

To
The Second Additional District Munsif Court,
Erode.

WEB COPY

C.R.P. (PD).Nos.1664 & 1665 of 2015
and
M.P.No.1 of 2015