

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 27.06.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE**

**CRP(NPD)No.3943 of 2014**  
**and M.P.No.1 of 2014**

1.Rajagopal

2.Thavamani

... Petitioners

Vs

1.Lakshmi

2.Dhanapal

... Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, against the order and decretal order passed in I.A.No.645 of 2014 in O.S.No.569 of 2004 dated 13.8.2014 on the file of the Additional District Munsif Court at Cheyyar, Tiruvannamalai District, and prays that the same may kindly be set aside.

For Petitioners : Mr.K.G.Senthil Kumar

For Respondents : Mr.K.S.Kumar for R1

R2-Ex-parte

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**ORDER**

The instant Civil Revision Petition has been filed challenging the order dated 13.08.2014, passed by the District Munsif Court at Cheyyar, Tiruvannamalai District in I.No.645 of 2014 in O.S.No.569 of 2004.

**Brief facts leading to the filing of the instant revision:**

2.The petitioners are the defendant Nos. 1 and 2 in the suit in O.S.No.569 of 2004 filed by the first respondent before the District Munsif Court at Cheyyar, Tiruvannamalai District, seeking for declaration of title, recovery of possession and also for mandatory injunction in respect of the suit schedule property. A written statement has also been filed in the suit by the petitioners/defendant Nos.1 and 2. Issues were also framed by the trial Court and thereafter, the trial also commenced. At the stage of arguments, I.A.No.645 of 2014 has been filed by the first respondent/plaintiff under Section 151 CPC to reopen and recall PW1 for the purpose of re-examining PW1 and for marking additional documents. A counter affidavit was also filed by the petitioners/defendant Nos.1 & 2 in I.A.No.645 of 2014, wherein they have stated that only to protract the proceedings, the application has been filed by the first

respondent/plaintiff and according to them, without disclosing the documents, the application filed by the first respondent/plaintiff in I.A.No.645 of 2014 is not maintainable under Order 18 Rule 17 CPC.

3.The trial Court by its order dated 13.08.2014, allowed I.A.No.645 of 2014 filed by the first respondent/plaintiff, seeking to reopen and recall PW1 for the purpose of re-examination and for marking additional documents.

4.Aggrieved by the order dated 13.08.2014 in I.A.No.645 of 2014, the instant Civil Revision Petition has been filed by the petitioner who are the defendant Nos.1 & 2 in the suit.

5.Heard Mr.K.G.Senthil Kumar, learned counsel for the petitioners and Mr.K.S.Kumar, learned counsel for the first respondent.

6.The only ground for challenge in the instant Civil Revision Petition is that under Order 18 Rule 17 CPC, the list of witnesses and the list of additional documents will have to be furnished. But, according to the learned counsel for the petitioners, the first respondent/plaintiff has not furnished the list of documents as well as the list of witnesses in I.A.No.645 of 2014 filed by the first respondent/plaintiff and hence according to him, the trial Court ought

to have dismissed the said application.

**Submission of the learned counsels:**

7.The learned counsel for the petitioners also drew the attention of this Court to a judgment of Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar (Dead) through LRs. vs. Sharadchandra Prabhakar Gogate** reported in **(2009) 4 SCC 410**. Relying upon the said judgment, Order 18 Rule 17 CPC is not intended to be used to fill up omissions in the evidence of a witness who has also been examined and the main purpose of Order 18 Rule 17 CPC is to enable the Court to clarify any doubts that may have arisen during the course of his examination.

8.The learned counsel for the petitioners also relied upon another judgment of the Hon'ble Supreme Court in the case of **Bagai Construction thr. its Proprietor Lalit Bagai vs. Gupta Building Material Store** reported in **(2013) 3 MLJ 185 (SC)** and submitted that since in the case on hand, final arguments were heard and judgment was reserved and thereafter, in order to improve her case, the plaintiff has come forward with such application to re-examine PW1 and to mark additional documents. Relying upon the aforesaid judgment, the learned counsel for the petitioners would submit that since the application was filed by the first respondent/plaintiff at the stage of arguments in the suit, an application filed under Order 18 Rule

17 read with Section 151 CPC is not maintainable.

9. Per contra, the learned counsel for the first respondent/plaintiff would submit that the application has been filed under Section 151 CPC and not under Order 18 Rule 17 CPC. He would also submit that arguments were not heard by the trial Court and therefore, the judgment relied upon by the learned counsel for the petitioners reported in **(2013) 3 MLJ 185 (SC)** is not applicable to the facts of the instant case.

10. Further, he would contend that in the affidavit filed in support of I.A.No.645 of 2014, the first respondent/plaintiff has not filed the application to fill up any lacuna in the plaint, the petition has been filed to reopen and recall PW1 for the purpose of re-examination and for marking additional documents. This being the case, the learned counsel for the first respondent/plaintiff submitted that the judgment relied upon by the learned counsel for the petitioners reported in **(2009) 4 SCC 410** is not applicable to the facts of the instant case.

### **Discussion:**

11. This Court has perused and examined the impugned order as well as the judgments relied upon by the learned counsel for the petitioners. This Court has also perused the affidavit filed in support of

I.A.No.645 of 2014. In the said application, the details of the witnesses and the details of the additional documents proposed to be marked have not been disclosed by the first respondent/plaintiff. Order 18 Rule 17 CPC, permits the Court to recall any witness who has been examined.

12.As seen from the affidavit, it is the not the case of the first respondent/plaintiff that only to fill up lacuna in the plaint, he has filed the application. The first respondent/plaintiff's case is that in order to prove that her vendor Dhanapalan was in absolute possession of the suit schedule property and after the purchase by her as to how long she has been in possession, certain additional documents are required to be marked as exhibits. This being the case, as rightly observed by the trial Court, the first respondent/plaintiff is entitled to recall and reopen PW1 for the purpose of re-examination of PW1 as well as for marking additional documents as the application has not been filed to fill up the lacuna in the plaint. However, regarding the proof and relevancy of the additional documents that are proposed to be filed, by the first respondent/plaintiff, it is open to the petitioners to object the marking of the said additional documents if it is not in accordance with law at the time of trial. In view of the foregoing reasons, judgments relied upon by the learned counsel for the petitioners is not applicable

to the facts of the instant case.

13.In the result, the impugned order dated 13.08.2014, passed by the Additional District Munsif Court at Cheyyar, Tiruvannamalai District in I.A.No.645 of 2014 in O.S.No.569 of 2004 is hereby confirmed. However, the first petitioner/defendant Nos.1 and 2 are granted liberty to raise objections if any to the marking of additional documents by the first respondent/plaintiff if they are not in accordance with law.

14.With the aforesaid directions, the instant Civil Revision Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Internet: Yes/No

Speaking Order/Non-speaking Order

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**ABDUL QUDDHOSE, J.**

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To

The Additional District Munsif Court at Cheyyar,  
Tiruvannamalai District.



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