

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD) Nos.4116 to 4118 of 2014 and
M.P.No.1 of 2014

1. Smt.Velumani

2. Karthikeyan

3. Anand Kumar

4. Manjula Devi

Petitioners in all CRPs

Vs

Smt.Rajammal

Respondent in all CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal orders dated 08.07.2014 passed in I.A.Nos.400,401 and 402 of 2014 in O.S.No.1482 of 2008, on the file of III Additional District Munsif Court, Coimbatore.

For Petitioners
(in all CRPs)

: Mr.V.Venkkatasamy

For Respondent
(in all CRPs)

: Mr.R.Bharathkumar

COMMON ORDER

The plaintiffs in OS No.1482 of 2008 on the file of I Additional

District Munsif, Coimbatore are the petitioners herein. In earlier occasion, before the trial Court, the deceased K.Chellamuthu Gounder has filed a suit as against the respondent herein and seeks the relief of declaration declaring that the deceased plaintiff is the absolute owner of the suit property and for consequential relief of permanent injunction.

2. During the pendency of the said Suit, since the plaintiff K.Chellamuthu Gounder died, his legal representatives are added as plaintiffs 2 to 5 in the said Suit.

3. The learned I Additional District Munsif, Coimbatore after affording an opportunity to the respondent, tried the suit as per procedure contemplated under the provisions of Civil Procedure Code. When the suit is posted for both side arguments, the petitioners herein have filed three applications in IA.Nos.400,401 and 402 of 2014, before the III Additional District Munsif Court, Coimbatore. In the said applications, I.A.No.400 of 2014 has been filed for the relief of re-opening the plaintiff's side case. I.A.No.401 of 2014 has been filed for the relief of recalling PW 1, for the purpose of recording further chief examination. Finally, IA No.402 of 2014 has been filed under Order 7 Rule 14(2) of Civil Procedure Code, with a prayer to condone the delay in filing the document, which was enclosed along with the petition.

4. Before the trial Court, all the three applications have been taken together and notice was ordered to the respondent for filing objection on his side. Obeying the order passed by the learned trial judge, the respondent in this application as a defendant has filed his counter statement, in which he has objected the petition filed by the petitioners stating that the document enclosed along with the petition is a sale deed, which was executed only after filing of the suit and thereby the said document cannot be received as an evidence and consequently all other two applications for reopening and to recall PW 1 is not at all required for disposal of the suit.

5. Considering the submissions made by either side, the learned III Additional District Munsif, Coimbatore by an order dated 08.07.2014, had dismissed all the three applications filed by the petitioners. Aggrieved over the said findings, the petitioners are before this Court, with these Civil Revision Petitions.

6. Today, when these petitions are came up for hearing, the learned counsel appearing for the petitioners in all CRPs is present and made a submission that originally the suit schedule properties and other properties were purchased by one Kumarappan vide sale deeds dated 13.07.1967 and 09.06.1971. Further, after registered exchange deed dated 30.03.1983, land measuring 93 cents belonging to K.Devarajan were allotted to the plaintiff and his brother. Similarly, the land measuring

93 cents in SF No.99 was allotted to Devarajan. Thus, the plaintiff and his brother were owners of 2.79 1/2 acres in S.F.No.94. He has further added that even in his life time, during 1981, family arrangement took place, in which, the western portion in SF No.94 measuring an extent of 1.45 acres was allotted to the plaintiff. The learned counsel further submitted that since there was no document executed in respect to the family arrangement, it is necessary to mark the sale deed dated 01.10.2012 executed by K.Sivasamy in favour of K.C.Krishnamurthy & K.R.Sivaraj, in which there was recital found in respect to the family arrangement made in the family of plaintiff.

7. Resisting the claim made by the petitioner, the learned counsel appearing for the respondent would contend that the date of the document now produced by the petitioner is 01.10.2012, which is the date subsequent to the date of Suit. Hence, it cannot be received as an additional evidence, for the reason that there may be a chance of creating the suit document only for the purpose of defeating the claim made by the plaintiff. He has further added that the alleged family partition had happened in year of 1981. So, if it is true, necessary mutations might have been effected in the revenue records subsequently. In order to prove the subsequent changes made in the revenue records, the petitioner has not produced any document and thereby the claim made by the petitioners is not a bonafide one.

8. While at the time of making submissions, the learned counsel appearing for the petitioners relied upon the judgment (Sundaram Dynacast Pvt Ltd Vs Raas Controls, reported in 2011 (3) CTC 302, where in, it was held as follows

11. Yet another decision that was relied on by the learned counsel appearing for the respondents is reported in Central Bank of India Vs.M/s.Rama Granites, 2006 (1) CTC 610. By citing the said decision, the learned counsel appearing for the respondents contended that if the party satisfies the Court that the evidence sought to be produced was not within his knowledge or could not be produced at the time when he let in evidence, the Court has got ample inherent power to permit such evidence to be let in at a later stage also.

Further, he relied upon the judgment of our Honourable Apex Court (Ram Rati Vs. Mange Ram (D) through L.Rs and others) reported in 2016 (5) CTC 555, wherein our Honourable Apex has held as follows:-

14. The rigour under Rule 17, however, does not affect the inherent powers of the Court to pass the required Orders for ends of justice to reopen the evidence for the purpose of further examination or cross-examination or even for production of fresh

evidence. This power can also be exercised at any stage of the Suit, even after closure of evidence. Thus, the inherent power is the only recourse, as held by this Court in K.K.Velusamy (supra) at Paragraph-11, which reads as follows:-

"11. There is not specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such Orders as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. In the absence of any provision providing for reopening of evidence or recall of any Witness for further examination or cross-examination, for purposes other than securing clarification required by the Court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall Witnesses for further examination. This inherent power of the Court is not affected by the

express power conferred upon the Court under Order 18, Rule 17 of the Code to recall any Witness to enable the Court to put such question to elicit any clarifications".

9. Therefore, on culling out the principle laid down in the Judgments referred above, it is true that this Court is having ample power to recall and to receive the documents at any stage before closing the proceedings. But in this case, the petitioners have filed applications belatedly in the year of 2014. Further, it is to be noted that the document now required to be received by this Court is executed in the year of 2012, but, for the reasons best known to the petitioners, these applications have been filed in the year 2014. In this regard, in the affidavit filed by the petitioner in support of the petition filed by him, he has stated that now only the enclosed document is traced out. But considering the fact that the party to the document is a close relative of the petitioner, it cannot be said that the petitioner gained the knowledge about the document only now. If the petitioner thought this alleged document is essential to decide the case, immediately after the execution of the said document, he could very well file an application without any delay. More than that, since the document is executed after four years from the date of suit, the same has lost its evidentiary value. In the said circumstances, it is necessary and useful to see the judgment of 2016 (14) SCC 142, in which our honourable Apex Court has held in Para 8 as under.

“8. In this context, we may fruitfully refer to Bagai Construction v. Gupta Building Material Store. In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order 18 Rule 17 that was rejected by the trial Court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. In the said case, it has also been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated.”

So, applying the said principle laid down in this case also, the delay in filing the application is against the principle laid down by our Honourable Apex Court as above.

10. In these applications, another issue needs to be decided is whether the property sold through the document dated 01.10.2012 is connected with the Suit schedule property or not. Only because of the reason that the vendor of the said sale deed is a relative to the petitioner, it cannot be said that the suit property is also partitioned in the alleged family arrangement made among the brothers. Therefore, in any event, the ground raised by the petitioner to set aside the order dated 08.07.2014, is not at all sufficient to set aside the order.

11. In view of the above discussions, these Civil Revision Petitions are dismissed. No costs. However, since the suit is of year 2008, it is appropriate to issue some direction for early disposal of the suit. Hence, the I Additional District Munsif, Coimbatore is directed to dispose of the suit as early as possible, preferably within a period of 4 months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

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25.09.2019

To

The I Additional District Munsif, Coimbatore

R.PONGIAPPAN, J.,

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and
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