

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(PD).No.5018 of 2014
and
M.P.No.1 of 2014

S.Shameer Ahmed

... Petitioner

Vs.

1.K.Ramesh

2.Vijayalakshmi

3.Geetha

4.Srinivasan

5.Krishnan

6.Jayalakshmi

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order in I.A.No.239 of 2013 in O.S.No.112 of 2010, on the file of the Subordinate Court, Tiruvallur, dated 09.10.2013.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.K.Balaji

ORDER

The petitioner was the third defendant in O.S.No.112 of 2010 before the Subordinate Judge, Tiruvallur. The respondents 1 to 4 are the plaintiffs in the above suit. The respondents 5 to 6 are the defendants 1 to 2 in the above suit.

2.After the respondents 1 to 4 filed their written statement and after the closure of evidence an I.A.No.239 of 2013 in O.S.No.112 of 2010 was filed under Section 151 of C.P.C., to reopen the evidence to enable respondents 1 to 4 to examine further witness and to mark documents on their side.

3.This application was allowed by the Lower Court vide impugned fair and decreetal order dated 09.10.2013. Aggrieved by the same the petitioner/third defendant has filed the present Civil Revision Petition before this Court.

4.The Lower Court has concluded that the respondents 1 to 4 (plaintiffs) did not seek to recall any witness for introduction of any new case but were merely reiterating the stand taken by them that there was a joint family nucleus from and out of which the suit properties were purchased which was sold by respondents 5 and 6

(defendants 1 and 2) to the petitioner herein. Therefore, the prayer was reasonable and should not be curtailed merely because of delay on the prayer was genuine and not tainted with any ulterior intention to fill up the lacunae.

5. Challenging the same, the learned counsel for the petitioner in support of the present Civil Revision Petition referred the decision of the Honourable Supreme Court in **Bagai construction vs Gupta Building Material Store** (2013) 14 SCC, After elaborately discussing the law. The Honourable Supreme Court in Paragraph 14 held as under:-

"14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial Court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial Court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the

plaintiff during the entire trial. Unfortunately, the High Court taking note of the words "at any stage" occurring in Order XVIII Rule 17 casually set aside the order of the trial Court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW-1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of the court and Court can exercise its discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial Court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 of CPC, the plaintiff cannot be permitted."

6.The above ratio of the Honourable Supreme Court, applies to the four corners of the present case. Therefore, the impugned fair and decreetal order passed by the Subordinate Judge, Tiruvallur cannot be sustained.

7.Consequently, the said impugned fair and decreetal order is set aside.

8.Since the case of the year 2008, the Lower Court is directed to dispose the suit within a period of six months from the date of communication of this order.

9.The Civil Revision petition stands allowed. Consequently,
connected Miscellaneous Petition is closed.

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Index :Yes/No
Internet :Yes/No
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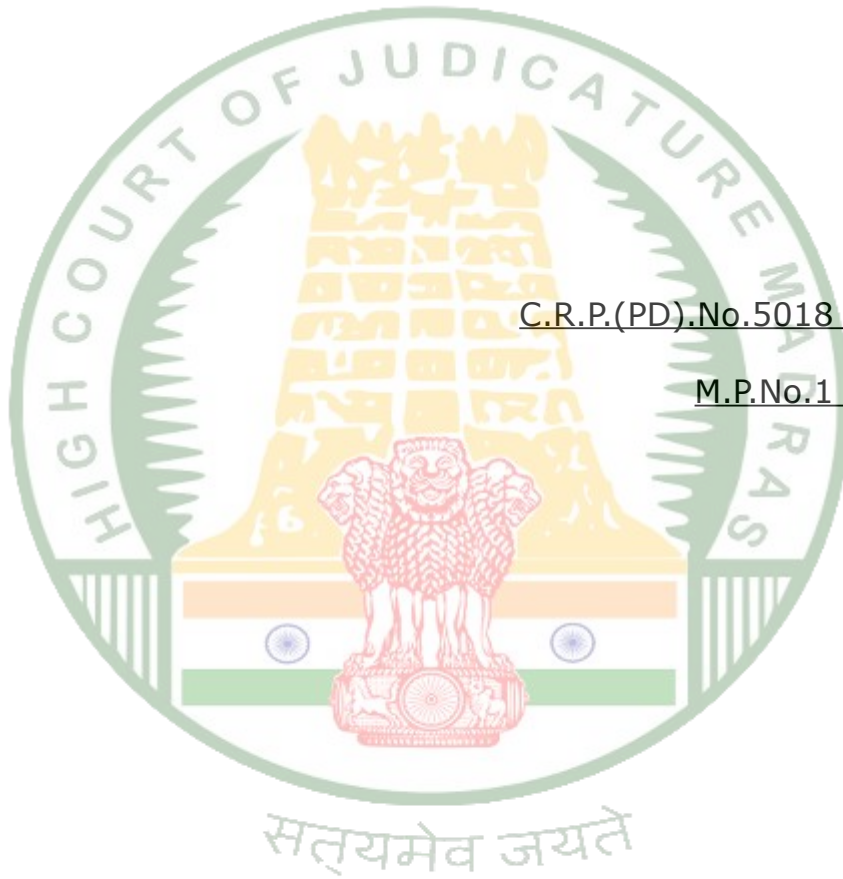
To
The Subordinate Court,
Tiruvallur.



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C.SARAVANAN, J.

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