



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2019

CORAM:

THE HONOURABLE **MRS.JUSTICE S.RAMATHILAGAM**

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C.R.P (PD) (MD) No.445 & 446 of 2019

and

C.M.P. (MD) No.2262 of 2019

1.G.Selvaraj

2.Lalitha

3.S.Initha

... Petitioners/Petitioners/
Plaintiffs (in both petitions)

Vs.

1. State of Tamilnadu represented by
The District Collector,
Kanyakumari District,
Collectorate, Nagercoil.

2. The Tashildar,
Vilavancode Taluk,
office at Kuzhithurai,
Kuzhithurai Post,
Kanyakumari District.

3.The Executive Officer,
Palappallam Town Panchayat
Palappallam, Palappallam Post,
Keezhmidalam Village,
Vilavancode Taluk,
Kanyakumari District.

3.Mohan Chandra Kumar ... Respondents/Respondents
Defendant (in both petitions)

Common Prayer: These Civil Revision Petitions have been filed under Article 227 of Constitution of India, to allow the Civil Revision Petitions and modify the orders passed in I.A.Nos.818 & 819 of 2018 in O.S.No.89 of 2012 dated 05.01.2019 on the file of the Sub-Ordinate Judge, Padmanabhapuram and render justice.

For Petitioner : Mr.C.Godwin
(in both petitions)

COMMON ORDER

I.A. No.818 of 2018 was filed by the petitioners/plaintiffs in O.S.No.89 of 2012, wherein prayer has been made for declaration of title and possession over the suit schedule property. The said suit was resisted by the defendants contending that the suit



schedule lands in Keezhmidalam Village is Kulam Poramboke and Pathai Poramboke, which would be evident from the settlement register.

2. During the trial of the suit, D.W.1 was examined on behalf of the defendants, who has stated that the disputed land is a Kulam poramboke, which would be evident from the settlement register, but the same has not been produced. To controvert the said statement, the present application has been taken by the petitioners/plaintiffs to recall D.W.1 for cross examination and to mark the settlement register.

3. The said application is resisted by the defendants on the ground that petitioners/plaintiffs had opportunity to cross examine D.W.1, which they have exhausted and, therefore, at this distant point of time, it is not open to the petitioners/plaintiffs to recall D.W.1. The present petition by the petitioners/plaintiffs is only for the purpose of prolonging the matter and, therefore, the present applications for recalling D.W.1 and also for production of the settlement registers are not maintainable and, therefore, sought for dismissal of the applications.

4. The trial court, after taking into consideration the contentions and counter contentions and also perusing the materials available on record, though held that the applications have been filed belatedly to recall D.W.1 and also to mark the settlement registers, however, with a view to render substantial justice, had allowed the applications, but imposed a cost to be paid by the petitioners/plaintiffs. A perusal of the order passed by the trial court reveals that D.W.1 had relied on Exs.B-1, B-3, 'A' register and 'B' register to impress upon the court that the disputed lands were classified as Kulam poramboke, but the records pertaining to S. Nos.1880 and 1881 have not been marked.

5. The trial court, after careful analysis of the documents placed before it, held that the plaintiffs/petitioners did not choose to summon the Assistant Director of Settlements for the purpose of proving their title with reference to the old settlement records. Further, the Court held that the plaintiffs/petitioners have not taken a stand that the name of their ancestors figured in the old settlement registers. Merely because D.W.1 had taken a stand that the disputed lands were classified as Kulam Poramboke and Pathai Poramboke, the petitioners/plaintiffs are clutching the said statement as a straw to further their case for reopening the case by calling D.W.1 for further examination and also for causing production of the settlement registers. The trial court held that the petitioners/plaintiffs have slept over the matter for a considerable length of time and had come before the Court belatedly and, therefore, held that no purpose would be served in allowing the applications.



6. However, with a view to render substantial justice, the trial court allowed the applications, however with costs. Aggrieved by the said order, the plaintiffs/petitioners herein are before this Court.

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7. Heard the learned counsel appearing for the petitioners and perused the materials available on record as also the impugned order passed by the court below.

8. It is clear from the order of the Court below that the case is in the stage of argument and is posted as such for argument on 31.10.2018. At that point of time, the petitioners herein wanted to reopen the case by calling D.W.1 for further examination on the pretext that D.W.1, during examination had relied upon the registers and extracts to drive home the case that the disputed lands were kulam poramboke and pathai poramboke. By clutching to the said statement, the petitioners herein want to reopen the case, which is ripe at the stage of argument. The original suit itself is of the year 2012 and the present applications have been preferred in the year 2018 for the relief sought as above. Further, as seen, not only from the order of the trial court, but also from the materials available on record that the petitioners have not claimed that the names of their ancestors figured in the old settlement register. It is evident that only for the purpose of merely disproving the evidence of D.W.1 that the petitioners want to recall D.W.1 and also cause production of the settlement registers. The petitioners have nowhere stated as to what they expect to prove by recalling D.W.1 and also what they sought to establish by introducing the settlement registers. When the petitioners themselves are not able to state that the names of their ancestors figure in the settlement register, trying to discredit the testimony of D.W.1 to the limited extent of establishing something otherwise than what D.W.1 has stated would in no way further the case of the petitioners.

9. Considering all the above, without precluding the petitioners/plaintiffs their right to introduce evidence, the trial court has, to render complete justice allowed the applications on certain terms. The order passed by the trial court, by no stretch of imagination, could be said to be perverse or illegal. The trial court has given cogent and convincing reasons to arrive at the said findings and, this Court is not inclined to interfere with the well considered findings recorded by the court below. The present petitions on behalf of the petitioners are nothing but a tool to prolong the matter to reach its logical conclusion. In such view of the matter, this Court is of the considered view while these petitions are liable to be dismissed, in the facts and circumstances of this case, imposition of costs, is just and warranted.



10. For the reasons stated above, these civil revision petitions are dismissed along with a cost of Rs.500/- (Rupees Five Hundred only) payable by the petitioners to the Honourable Chief Justice Relief Fund (payable in Accounts Section of the High Court Registry, Madurai Bench), within a period of two weeks from the date of receipt of a copy of this order and report compliance of the same to the Registry of this Court by filing necessary proof thereof. Proof of payment of the costs as ordered above shall also be filed before the Court below, wherein after, the court below shall proceed further with the matter. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

Dss

To

1. The Sub-Ordinate Judge, Padmanabhapuram.
2. The District Collector, Kanyakumari District, Collectorate, Nagercoil.
3. The Tashildar, Vilavancode Taluk, office at Kuzhithurai, Kuzhithurai Post, Kanyakumari District.
4. The Executive Officer, Palappallam Town Panchayat Palappallam, Palappallam Post, Keezhmidalam Village, Vilavancode Taluk, Kanyakumari District.
5. The Section Officer, Accounts Section, Madurai Bench of Madras High Court, Madurai.

+2cc to M/s.C.Godwin, Advocate in SR.54772 & 54773

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