



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WEB COPY

C.R.P. (MD) .Nos.1919 and 1920 of 2019

and

C.M.P. (MD) .No.9801 of 2019

in

C.R.P(MD) .No.1919 of 2019

Mahin

... Revision Petitioner/Petitioner/
Plaintiff in both C.R.Ps

Vs.

Ayyakutty (Died)

1.Saradhas

2.Rajam

3.Rajesh

4.Chandhiri

... Respondents/Respondents/
Defendants in both C.R.Ps

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 01.08.2019 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.382 of 2008 on the file of the Additional District Munsif, Padmanabhapuram.

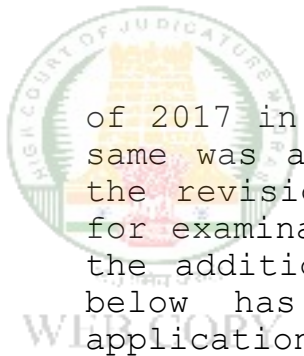
For Petitioner : Mr.C.K.M.Appaji

COMMON ORDER

These Civil Revision Petitions are filed challenging the order dated 01.08.2019 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.382 of 2008 by the Additional District Munsif, Padmanabhapuram.

2.The revision petitioner, who is the plaintiff, has filed I.A.Nos.1 and 2 of 2019, to recall D.W.1 for examination and to re-open the evidence. The Court below has dismissed the said I.As stating that only to prolong and procrastinate the proceedings and further observed that these applications are filed belatedly. Further, the plaintiff without availing opportunity for cross examination of D.W.1 by putting forth all their possible questions, that too, consuming nearly four years, cannot take advantage of his own wrong. Therefore, the Court below by referring to the judgment of the Hon'ble Apex Court and dismissed the said applications. Aggrieved against the same, the revision petitioner is before this Court.

3.The learned counsel appearing for the revision petitioner contended that the revision petitioner has filed I.A.Nos.632 and 633



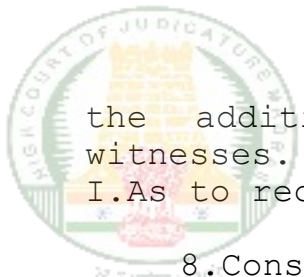
of 2017 in O.S.No.382 of 2008 to raise additional pleadings and the same was allowed by the Court below on 14.11.2018. Subsequently, the revision petitioner has filed an application to recall D.W.1 for examination and to re-open the evidence on 05.12.2019, based on the additional pleadings. Without giving an opportunity, the Court below has dismissed the said application holding that these applications have been filed after a period of four years with an intention to protract the proceedings. Further, while dismissing the said application based on the additional pleadings and subsequent to the filing of the additional pleadings, the aspect of the re-examining D.W.1 have not been considered by the Court below. Therefore, the interference of the Court is just and necessary and consequently to set aside the order passed by the Court below and to permit the revision petitioner to examine D.W.1 by allowing the application filed by the revision petitioner to recall and to re-open D.W.1.

4.When the matter is taken up for hearing today, no one appeared on behalf of the respondents, though notice has been served on them and their names are printed in the cause list.

5.Heard the learned counsel appearing for the revision petitioner and perused the materials available on record.

6.On a perusal of the order of the Court below, it is seen that the Court below has referred to the judgment of the Hon'ble Supreme Court in the case of **BAGAI CONSTRUCTIONS THRO. ITS PROPRIETOR MR.LALIT BAGAI V. M/S.GUPTA BUILDING MATERIAL STORE**, reported in **2013-2-L.W. 610**, in which it has been stated that the parties cannot be permitted to file the application to fill up the lacunae by filing petition to recall the witness. By referring to another judgment of this Court in the case of **K.KALAIARASAN V. M.LINGAM & ORS.** Reported in **2010-1-L.W. 370**, wherein it has been held that when sufficient opportunities were given and the petition for reopen and recall is filed belatedly, such attitude is only to further postpone the proceedings of the suit. Hence, by referring to those judgments, the Court below has dismissed the said I.As.

7.The Court below without considering the aspect of the filing of the petition filed by the revision petitioner to raise the additional pleadings, came to a wrong conclusion that the applications were filed only to fill up the lacunae and after 4 years, the Court below has allowed the applications to raise the additional pleadings. The applications to recall and reopen the evidence of D.W.1 has been filed on 05.12.2018, which is subsequent to allowing the application for additional pleadings on 04.11.2018 and therefore, this Court do not find any delay on the part of the revision petitioner to file the applications to recall and and reopen the evidence D.W.1. Therefore, this Court is of the view that the parties are entitled to recall and reopen the evidence, based on



the additional pleadings, to raise any question before the witnesses. In this regard, the revision petitioner has filed these I.As to recall and reopen the D.W.1.

8.Considering all these facts, this Court is of the opinion that the Court below has come to a wrong conclusion and therefore, the order 01.08.2019 passed in I.A.Nos.1 and 2 of 2019 in O.S.No.382 of 2008, is liable to be set aside. Accordingly, these Civil Revision Petitions are allowed and the revision petitioner is permitted to cross examine D.W.1 within 5 working days from the date of first hearing, after the receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Additional District Munsif,
Padmanabhapuram.
2. The Section Officer,
VR Section(2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.C.K.M.APPAJI, Advocate (SR-99057[F] dated 18/11/2019)

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