

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.No.1031 of 2020

J.Karthikeyan

...Petitioner/Petitioner/3rd Defendant

Vs.

1.Saroja

...1st Respondent/1st Respondent/Plaintiff

2.Selvanayagam

...2nd Respondent/2nd Respondent/1st Defendant

Jayaraman (Deceased)

3.Vanitha

4.Selvamurugan

5.Murali

6.Anuradha

...3 to 6 Respondents/

Respondents 4 to 7/Defendants 4 to 7

Prayer:- Civil Revision Petitions are filed under Article 227 of Constitution of India against the order and decretal order passed IA No. 198/2019 in OS No. 30/2008 on the file of the Principal District Court Tiruvarur dt.22/01/2020 may kindly be set aside.

For Petitioner : M/s. S.Prem Auxilan Raj

For Respondent : Mr.T.Susindran For R1

ORDER

This Civil Revision Petition is filed to set aside the order dated 22/01/2020 passed in IA No. 198/2019 in OS No. 30/2008 on the file of the Principal District Court Tiruvarur

2. The 1st respondent herein has filed a Suit in O.S.No.30 of 2008 for declaration and recovery of possession. In the said suit, evidences of both sides were concluded and posted for arguments. At this stage, petitioner herein had filed an Application in I.A.No. 198 of 2019 to reopen the case and examine the 1st defendant and scribe of the unregistered sale deed/Ex.B4. The said application was dismissed by the Court below without assigning any reason. Hence the present Civil Revision Petition.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

4. The learned counsel for the petitioner submitted that he is the 3rd defendant in the aforesaid Suit. It is necessary to reopen the evidence, because the 1st defendant's counsel while cross-examining the 3rd defendant had raised a doubt with regard to the signature found in Ex.B5. Therefore, it is necessary to prove Ex.B4 by examining the scribe of Ex.4 to establish the case of the 3rd defendant. It is the contention of the learned counsel for the petitioner that the said application ought to have been allowed by the Court below in order to determine the real issues involved in the said Suit.

5. On the other hand, the learned counsel for the respondents submitted that the petitioner had belatedly filed the instant application at the stage of arguments of the suit, therefore the same is liable to be dismissed.

6. On perusal of records, it is seen that the entire pleadings have been completed by both the parties, and issues framed and thereafter evidence on both sides have been concluded by the trial Court and posted for arguments. At this stage, the instant application has been filed to reopen the evidence of DW3 and also to take evidence of scribe of the unregistered sale deed/Ex.B3 is unacceptable and the Court below had rightly rejected the application. Acceptable.

7. In this context, it is useful to rely upon the judgment of the Hon'ble Supreme Court in the case of Ram Rati Vs. Mange Ram (dead) through legal representatives [(2016) 11 SCC 296]. The relevant portion is extracted below;

"12. In Vadiraj Naggappa Vernekar Vs. Sharadchandra Prabhakar Gogate, this principle has been summarised at paras 25, 28 and 29 (SCC pp. 414-15)

25. In our view, though the provisions of Order 18 Rule 17 of the Civil Procedure Code have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. That is not the scheme or intention of Order 18 Rule 17 CPC.

29. It is now well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit, but as indicated hereinabove, such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination".

8. This Court by relying upon the decision rendered by the Hon'ble Supreme Court cited supra holds that the said application cannot be allowed at the belated stage. If it is allowed it will amount to filling up of lacunae by permitting the additional evidence. Therefore, in the absence any bonafide reason, this Court cannot entertain such application.

9. In the light of the decisions of the Hon'ble Supreme Court cited supra, this Court is not inclined to interfere with the order passed by the court below. Accordingly, the Civil revision petition fails and the same is dismissed. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Principal District Judge
Tiruvarur

+1 CC to Mr.T.Susindran, Advocate sr 20868.

C.R.P.No.1031 of 2020

SSD(CO)
SP(01/09/2020)