

C.R.P.(PD).Nos.1202 and 1203 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

C.R.P.(PD).Nos.1202 and 1203 of 2020

&

C.M.P.Nos.6488 and 6490 of 2020

1.Rajini

2.Anbhazhagan

3.Minor, Yogeswaran
rep by his mother Jayanthi

4.The District Collector
Ariyalur

5.The Revenue Officer
Udayarpalayam Taluk
Ariyalur District

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6.The Tahsildar
Jayamkondam
Udayarapalayam Taluk
Ariyalur District

... Petitioners in both the cases

Vs.

Ayyadurai

... Respondent in both the cases

COMMON PRAYER: Civil Revision Petition Appeal filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 03.12.2019 made in I.A.Nos.02 and 03 of 2019 in O.S.No.198 of 2017 on the file of the Sub-Judge, Jayamkondam.

For Petitioners : Mr.M.Senthil Vaidvu

COMMON ORDER

Inveighing the order dated 03.12.2019 passed by the Sub-Judge, Jayamkondam dismissing the petitions to reopen the case and call the Tahsildar as defendant side witness with a direction to produce the copy of Chitta, Adangal and other relevant document in respect of the suit property,

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the petitioners have preferred the above revisions.

2. According to the petitioners, the Trial Court erred in not affording an opportunity to let in evidence through witness and to establish the fact that suit property is classified as Natham and the pathway has been used by the petitioners and their predecessors for more than 100 years to reach the property. According to the petitioners, the Hon'ble Supreme Court in 2011 (11) SCC 275, K.K.Velusamy vs. N.Palanisamy and 2009 (4) SCC 410, Vadiraj Nagappa Verneka vs. Sharad Chand Prabhakar Gogate has held that for the purpose of doing substantial justice, the inherent power under Sec.151 of the Code shall be exercised it cannot be mechanically denied as the petition was filed after hearing the arguments.

3. I have considered the materials placed before this Court.

4. From the perusal of records it is seen that the first defendant has filed the above petitions to reopen the case and summon the Tahsildar to

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appear alongwith revenue documents such as chitta, Adangal pertaining to Natham survey No.453/23 of Sudamalli Village.

5. Admittedly, the petitions were filed after the judgment was reserved by the Court. The petitioner/1st defendant in his affidavit would state that he approached the Tahsildar for processing copies of revenue records, which was refused, on other hand, the said Tahsildar agreed to let in evidence, if summoned by Court. Even assuming that the statement is true, the petitioner should have produced the copy of application made by him or at least the documents which were refused by the Tahsildar which are relevant to prove his case that the suit property is the Natham land. It is obvious that the copies of the revenue documents, would be provided on application, much less would be provided under Right to Information Act. Ironically, the petitioner/1st defendant himself neither appeared before the Court nor let in evidence either oral or documentary on their side. To prove that the defendants have easementary rights over the suit property, he could have let in evidence through documents. But, except the second defendant who has let

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in evidence as D.W.1, none were examined a witnesses. On the top of its, the 2nd defendant has stated that the defendants has no further evidence and defendants side evidence was closed.

6. It is also relevant to note that the Tahsildar was arrayed as 6th defendant in the suit. The petitioner could have taken steps to summon the Tahsildar even at the time of trial. But after the evidence was closed and after submitting their arguments, suddenly when the suit was suo motu re-opened for clarification, the petition has been filed. The conduct of the defendant, as observed by the trial court, shows that he is not keen to produce the documents, but attempts to protract the proceedings under some pretext. Law will assist only those who are vigilant in pursuing their case. In the instant case, the petitioner/1st defendant neither participated in the trial, nor caused to produce the require documents through the witness (D.W.1) or through independent witnesses. It is well settled that recording of evidence should be continuous and without gap. But petitioner has left a long gap which cannot be bridged even by imposing compensatory costs as the pleadings are bereft

of specific details as to the documents and their relevancy.

7. In K.K.Velusamy vs. N.Palanisamy reported in 2011(11) SCC 275, case, the Hon'ble Supreme Court has laid down that circumstances in which inherent power of the Code u/s. 151 in connection with Or.18 R.17 of C.P.C shall be exercised. The relevant portion of the judgment reads as under:

10. The respondent contended that section 151 cannot be used for re-opening evidence or for recalling witnesses. We are not able to accept the said submission as an absolute proposition. We however agree that section 151 of the Code cannot be routinely invoked for reopening evidence or recalling witnesses. The scope of section 151 has been explained by this Court in several decisions (See : Padam Sen vs. State of UP-AIR 1961 SC 218; Manoharlal Chopra vs. Seth Hiralal - AIR 1962 SC 527; Arjun Singh vs. Mohindra Kumar - AIR 1964 SC 993; Ram Chand and Sons Sugar Mills (P) Ltd. vs. Kanhay Lal - AIR 1966 SC 1899; Nain Singh vs. Koonwarjee - 1970 (1) SCC 732; The Newabganj Sugar Mills Co.Ltd. vs. Union of

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India - AIR 1976 SC 1152; Jaipur Mineral Development Syndicate vs. Commissioner of Income Tax, New Delhi - AIR 1977 SC 1348; National Institute of Mental Health & Neuro Sciences vs. C Parameshwara - 2005 (2) SCC 256; and Vinod Seth vs. Devinder Bajaj - 2010 (8) SCC 1). We may summarize them as follows:

(a) Section 151 is not a substantive provision which creates or confers any power or jurisdiction on courts. It merely recognizes the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is 'right' and undo what is 'wrong', that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

(b) As the provisions of the Code are not exhaustive, section 151 recognizes and confirms that if the Code does not expressly or impliedly cover any particular procedural aspect, the inherent power can be used to deal with such situation or aspect, if the ends of justice warrant it. The breadth of such power is co-extensive with

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the need to exercise such power on the facts and circumstances.

(c) A Court has no power to do that which is prohibited by law or the Code, by purported exercise of its inherent powers. If the Code contains provisions dealing with a particular topic or aspect, and such provisions either expressly or necessary implication exhaust the scope of the power of the court or the jurisdiction that may exercised in relation to that matter, the inherent power cannot be invoked in order to cut across the powers conferred by the Code or a manner inconsistent with such provisions. In other words the court cannot make use of the special provisions of Section 151 of the Code, where the remedy or procedure is provided in the Code.

(d) The inherent powers of the court being complementary to the powers specifically conferred, a court is free to exercise them for the purposes mentioned in Section 151 of the Code when the matter is not covered by any specific provision in the Code and the exercise of those powers would not in any way be in conflict with

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what has been expressly provided in the Code or be against the intention of the Legislature.

(e) While exercising the inherent power, the court will be doubly cautious, as there is no legislative guidance to deal with the procedural situation and the exercise of power depends upon the discretion and wisdom of the court, and the facts and circumstances of the case. The absence of an express provision in the code and the recognition and saving of the inherent power of a court, should not however be treated as a carte blanche to grant any relief.

(f) The power under section 151 will have to be used with circumspection and care, only where it is absolutely necessary, when there is no provision in the Code governing the matter, when the bona fides of the applicant cannot be doubted, when such exercise is to meet the ends of justice and to prevent abuse of process of court.

11. The Code earlier had a specific provision in Order 18 Rule 17A for production of evidence not previously known or the evidence which could not be produced despite due

diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1.7.2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

12. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express

provision for re-opening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

13. The learned counsel for respondent contended that once arguments are commenced, there could be no re-opening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to

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achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power under section 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

14. Neither the trial court nor the High court considered the question whether it was a fit case for exercise of discretion under section 151 or Order 18 Rule 17 of the Code. They have not

considered whether the evidence sought to be produced would either assist in clarifying the evidence led on the issues or lead to a just and effective adjudication. Both the courts have mechanically dismissed the application only on the ground that the matter was already at the stage of final arguments and the application would have the effect of delaying the proceedings.

15. The appellant - defendant has taken a consistent stand in his reply notice, written statement and evidence that the agreement of sale was executed to secure a loan of Rs.150,000, as the respondent insisted upon execution and registration of such agreement. If after the completion of recording of evidence, PW1 and PW2 had admitted during conversations that the amount paid was not advance towards sale price, but only a loan and the agreement of sale was obtained to secure the loan, that would be material evidence which came into existence subsequent to the recording of the depositions, having a bearing on the decision and will also clarify the evidence already led on the issues.

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According to the appellant, the said evidence came into existence only on 27.10.2008 and 31.10.2008, and he prepared the applications and filed them at the earliest, that is on 11.11.2008. As defendant could not have produced this material earlier and if the said evidence, if found valid and admissible, would assist the court to consider the evidence in the correct perspective or to render justice, it was a fit case for exercising the discretion under section 151 of the Code. The courts below have not applied their minds to the question whether such evidence will be relevant and whether the ends of justice require permission to let in such evidence. Therefore the order calls for interference.

16. We may add a word of caution. The power under section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the

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court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnesses, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier

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but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings, the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.

17. Ideally, the recording of evidence should be continuous, followed by arguments, without any gap. Courts should constantly endeavour to follow such a time schedule. The amended Code expects them to do so. If that is done, applications for adjournments, re-opening, recalling, or interim measures could be avoided. The more the period of pendency, the more the number of interlocutory applications which in turn add to the period of pendency.

7. It is pertinent to note that the above petition is not under Or.18 R.17

C.P.C, but under Or.16 R.1 to summon the Tahsildar at the fag end. The

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ration laid down by the Hon'ble Supreme Court does not come to the assistance of the petitioners. The Trial court considering that the petitioners have failed to mention as to what are the documents to be produced and the relevancy of such documents which would have an impact in the decision, has found it is an attempt to protract the proceedings and dismissed the petitions.

8. The petitioners having had so much of opportunities to produce all the relevant documents through witnesses on their side and having failed to conduct the case vigilantly have approached the Court at the fag end. The petitioners could have produced chitta and adangal and other revenue records, had they taken little efforts. There is no specific averment in the petition as to what are the documents, which cannot be produced by them and it can be produced only on summoning the Tahsildar. Without mentioning the document and without establishing that it may have bearing in the decision, filing a petition under Or.16 R.1, even there is some mistake in quoting the provision, on vague averments at the fag end of the proceedings is not

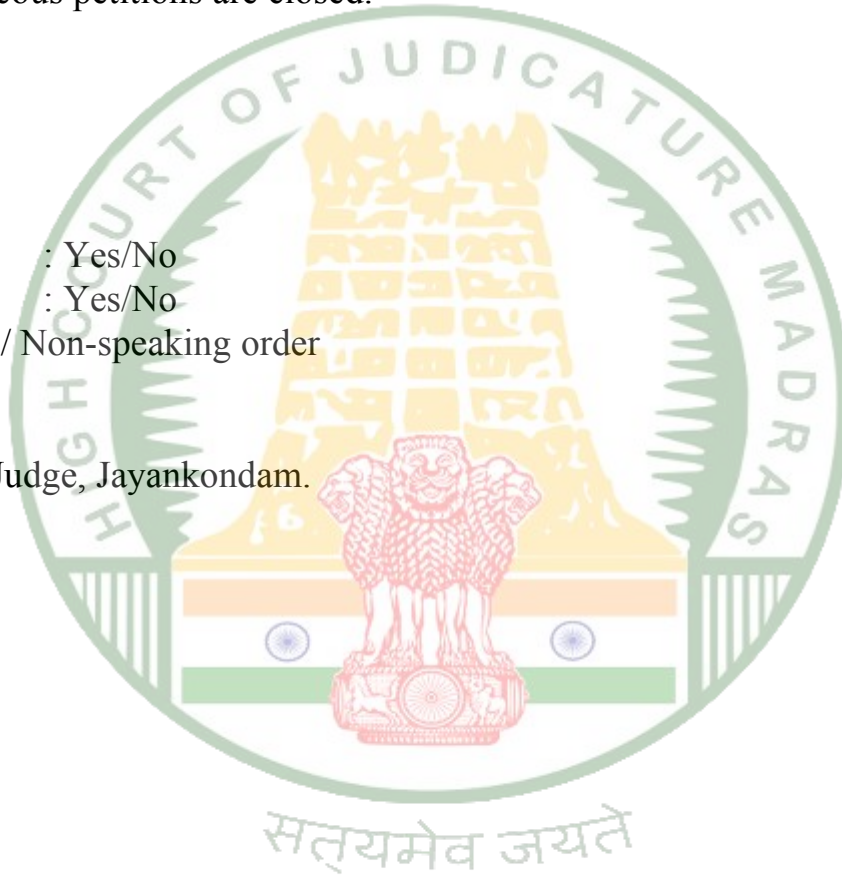
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sustainable. To be precise, the petitioner has failed to make out a case for exercising the inherent powers of the Court u/s. 151 C.P.C in his favour. Therefore, the Civil Revision petitions are dismissed. No Costs. Connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order

To
The Sub-Judge, Jayankondam.

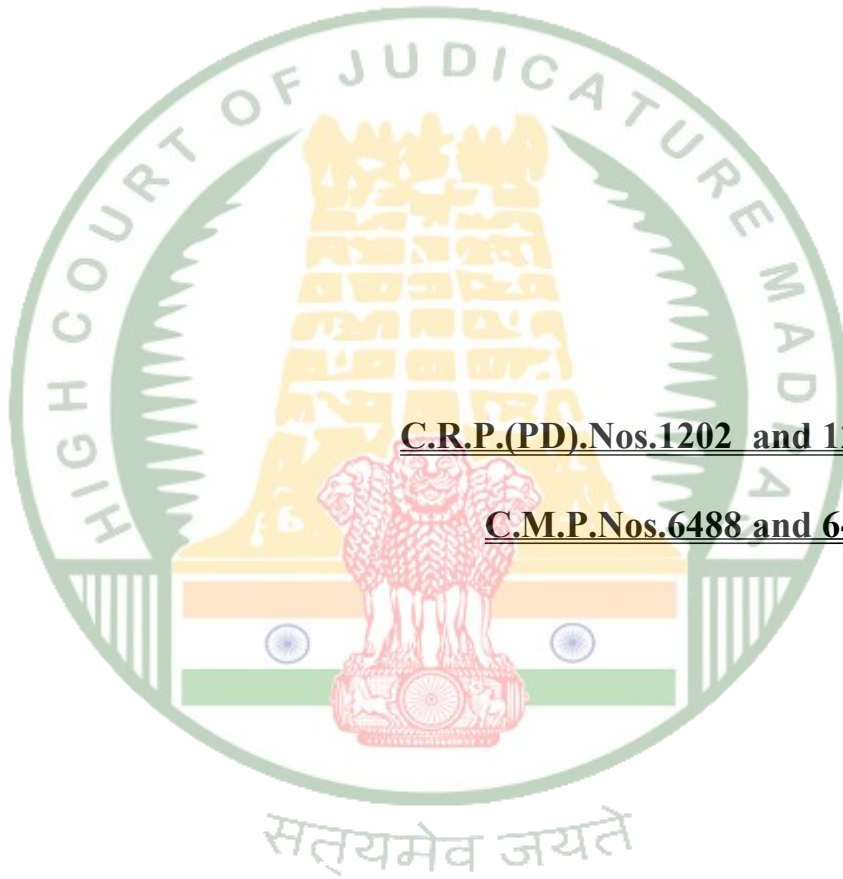


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