



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)Nos.1861 and 1862 of 2019

Arumugam

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

Vs.

Pushpavalli

..Respondent/Respondent/Defendant
in both C.R.Ps.

Common Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.Nos.526 and 525 of 2019 in O.S.No.46 of 2017 dated 13.08.2019 on the file of the learned Sub Judge, Thuraiyur, Trichy District.

For Petitioner (in all C.R.Ps.) : Mr.N.Sankar Ganesh

For Respondent (in all C.R.Ps.) : Mr.R.Govindaraj

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the common order passed in I.A.Nos.525 and 526 of 2019 in O.S.No.46 of 2017 dated 13.08.2019 on the file of the learned Sub Judge, Thuraiyur, Trichy District.

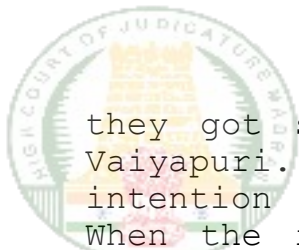
3.The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner herein has filed a suit in O.S.No.46 of 2017 for declaration and for mandatory injunction and for injunction. In that suit, the petitioner filed a petition in I.A.Nos.525 and 526 of 2019 to recall P.W.1 and to reopen the trial.

4.The brief substance of the application in I.A.Nos.525 and 526 of 2019 is as follows:

The suit properties are the ancestral properties of the petitioner. The defendant has no right over the properties. The petitioner went to Kerala and when he returned back, the defendant encroached upon 0.03 cent of land and constructed a house and porch. The petitioner has to prove his title over the suit property for that chitta and adangal extract before the UDR ought to be marked and P.W.1 has to be recalled and the trial has to be reopened.

5.The brief substance of the counter in I.A.Nos.525 and 526 of 2019 is as follows:

The suit properties originally belong to Periya Chellamuthiran who is the son of Pothiyar. After him, his sons, Perumal and Vaiyapuri divided the property in an oral partition and



they got separate pattas. The defendant is the daughter of said Vaiyapuri. Vaiyapuri got 0.23 cents in survey No.450/9. He had an intention to execute a settlement deed in favour of the defendant. When the revenue records are verified, they came to know Survey No.450/9 was sub divided into Survey Nos.450/9A and 450/9B and that Survey No.450/9A was entered in the name of Vaiyapuri and survey No.450/9B was entered in the name of one Arumugam, son of Palaniyandi.

As there is no other go, the defendant's father has executed a settlement deed only for an extent of 0.025 ares in survey No.450/9A and he filed a petition to remove the name of Arumugam regarding the balance 0.07 ares of land and filed a petition before the RDO, Musiri. On 10.11.2016, the plaintiff send an advocate notice with false particulars and the defendant sent a reply notice. After getting approval, the defendant constructed a house in door No.4/244. The defendant got electricity connection and water connection. Since the name of the plaintiff was mistakenly entered into the registers in survey No.450/9B for 0.070 ares, the petitioner is claiming the property as his ancestral property. On 04.12.2017, Vaiyapuri died and his legal heirs are necessary parties to the suit. P.W.1 was cross examined on 13.12.2018 and the case was posted for plaintiff side further evidence. After the matter was adjoined to 08.01.2019, 21.01.2019, 02.02.2018, 18.02.2019 and four witnesses were produced on the side of the plaintiff and the plaintiff side evidence was closed by the Court. The defendant side witnesses were examined and the defendant side evidence was closed on 24.06.2019. At the stage of arguments, these petitions were been filed to drag on the case.

6.After considering both sides, the trial Court dismissed the petition. Against which, the petitioner has filed this revision petitions.

7.On the side of the revision petitioner, it is stated that during the year 2015, the petitioner had gone to Kerala. When he returned back, he came to know that an encroachment was made by the respondent and immediately he filed a suit. The defendant has constructed a house in survey No.450/9A and however, the respondent in his written statement is claiming right over survey No.450/9B also. In order to prove the case, the petitioner has to produce documents prior to UDR. It is necessary to adduce evidence and to reopen the trial.

8.The trial Court was under the impression that the petition was to call for the records from the revenue authorities and the petitioner did not produce any revenue records along the interlocutory application. Under Order 41 Rule 27 of Civil Procedure Code, the litigant can adduce evidence even at the stage of appeal. The revenue records prior to UDR is an essential document to prove



the title of the plaintiff.

9.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **Sumathi v. Jeyaraj and others** reported in **2019 (1) TLNJ 189 (Civil)**, wherein it is stated as follows:

"in this judgment itself it has been held that the power to recall any witness under Order 18, Rule 17 may be exercised by the Court - either on its own or on application filed by any party to the suit - to err is human - the inadvertent omission committed by the 2nd defendant cannot be taken to be a serious mistakes committed by her - to meet the ends of justice."

10.On the side of the respondent, it is stated that the defendant denied the title of the plaintiff and the defendant claim title over the property. Only during the UDR scheme, the name of the plaintiff was mistakenly entered in the revenue records. The defendant is taking steps to delete the name of the plaintiff from the UDR patta. It is clearly stated in the petition that the petitioner intended to call for the revenue records from the Revenue Department. He has mentioned that he was having those document but it was made available only at the time of filing of the Interlocutory application. In the evidence of P.W.1, he has deposed that he did not know the name of his grandfather or the name of his grandfather's father. The plaintiff has deposed that he is not having any document to show his title prior to UDR. He has also deposed that he did not know that the patta was in the name of the defendant's grandfather. Only to fill up these lacunas, these petitions are filed. Omissions on the part of the plaintiff cannot be filled up at the time of arguments by filing these petitions. The petitioner is not clear whether he got the documents or he has to call for the records and the reasons for filing these petitions is vague. The trial Court is right in dismissing the petitions.

11.On the side of the respondent, it is stated that recall or reopen petitions cannot be allowed, even if there is no prejudice to the other party. The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **Ram Rati v. Mange Ram (d) Through Lrs. And others** reported in **2016 - 4 L.W. 447**, wherein it is stated as follows:

"No prejudice is caused to either party is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the Court but to be used only sparingly, and in case, the Court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground."



12.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **Ramasamy Kounder and others v. Asokan** reported in **2017 (1) MWN (CIVIL) 45**, wherein it is stated as follows:

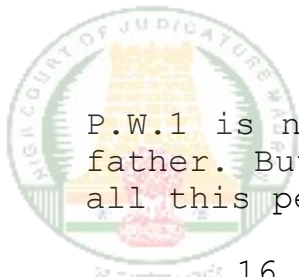
"15.Applying the principles laid down by the Apex Court in the decision reported in *K.K.Velusamy v. N.Palanisamy*, 2011 (3) CTC 422, this Court finds that the power of the Court, of course, is discretionary, it should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence let in by the parties and the said power is not entitled to be used to fill - up the omissions in the evidence of a witness, who has already been examined."

13.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **M/s.Bagai Construction through its Proprietor Mr.Lalit Bagai v. M/s.Gupta Building Material Store** reported in **2013 - 2 L.W. 610**, wherein it is stated as follows:

"The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and inappropriate 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 of CPC. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still plaintiff has not placed those bills on record."

14.It is seen that the plaintiff and the defendant claimed the suit property as their own. Both of them claim that the properties as their ancestral properties. Already both side evidence was over and the case is pending for arguments. At this stage, the petitioner filed this petition to reopen the trial and to recall P.W.1 to mark documents prior to UDR.

15.The claim of the petitioner is that those documents were obtained by the petitioner only at the time of filing of the interlocutory application. But in the prayer portion, it is stated that the petitioner has to call for the records from the Revenue Department. Whether the petitioner is having possession of the document he propose to mark or whether the document are to be sent for from the Revenue Department was not clearly stated in the petition. When the title was denied in the written statement itself, there is no necessity for the plaintiff to wait so long to get the documents. It is not the case of the plaintiff that he has taken steps to produce all this document and could not get them till the filing of this petition. The evidence of the plaintiff shows that



P.W.1 is not aware of the name of the grandfather or grandfather's father. But only at the stage of arguments, the plaintiff has filed all this petitions to drag on the proceedings.

16. In the above circumstances, there is nothing sufficient enough to interfere in the orders passed by the trial Court. The Civil Revision Petitions are dismissed and the common order passed in I.A.Nos.525 and 526 of 2019 in O.S.No.46 of 2017 dated 13.08.2019 on the file of the learned Sub Judge, Thuraiyur, Trichy District is confirmed. No costs.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN
To

The Sub Judge, Thuraiyur, Trichy.

+1 CC to M/s.N.SANKAR GANESH, Advocate (SR-7342[F] dated 20/02/2020

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19.02.2020

SMA/17/03/2020/5P/3C