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C.R.P.(MD)No.2218 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.12.2019

DELIVERED ON : 23.01.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.2218 of 2019

1.Palanimurugan

2.K.Pandi .. Petitioners/ Petitioners/2nd & 3rd Defendants

Vs.

1.M.Alagesan

2.M.Dhanam (Died)

3.M.Murugesan

4.S.Sumathi ...1 to 4 Respondents/1 to 4 Respondents/Plaintiffs

5.M.Sundaresan ... 5th Respondent/ 5th Respondent/1st Defendant

6.The District Educational Officer,
Allinagaram,
Theni-Allinagaram,
Theni Taluk,
Theni District.

7.The Assistant Elementary Educational Officer,
Meenkshiamman Kovil,
Andipatti Town,
Andipatti Taluk,
Theni District. .. 6th & 7th Respondents/ 6th & 7th Respondents/
4th & 5th Defendants

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal dated 31.10.2019 in I.A.No.3 of 2019 in O.S.No.40 of 2012 on the file of the learned District Munsif, Andipatti.

For Petitioner	: Mr.M.A.M.Raja
For Respondent	: Mr.M.Vallinayagam, Senior Counsel
	For Mr.M.Gnanagurunathan

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.3 of 2019 in O.S.No.40 of 2012 dated 31.10.2019 on the file of the learned District Munsif, Andipatti.

<https://hcservices.ecourts.gov.in/hcservices/>



6.The substance of the counter in I.A.No.3 of 2019 is as follows:

The I.A. Petition was filed at the stage of arguments that too after the completion of plaintiffs side arguments. It is wrong to state that the petitioners came to know about the documents only at the time of arguments, which is nothing but a technic to fill up the *lacunae*. The documents before this Court in W.P.(MD)Nos.1362 and 1978 of 2014 are relating to nominating an officer to discharge the functions of the suit school during the pendency of the suit and not related to the suit on hand. The plaintiffs filed a petition in I.A.No.176 of 2018 to mark the documents at the hands of the officials and one Nagajothi was examined as P.W.2 and Exs.C1 to C5 were marked on 07.12.2018. The petitioners failed to mark any document at that time and that filing this petition, is only with an intention to fill up the *lacunae*. There is no necessity to reopen the case or to recall any witness. The petition is only filed with an intention to drag on the proceedings.

7.The trial Court after considering both sides, dismissed the petition. Against which, the petitioners preferred this revision petition.

8.On the side of the revision petitioners, it is stated that the trial Court ought to have allowed the petition to summon and examine the Educational Authorities for production of files kept in their office. One of the relief sought for is transferring the school Management in favour of the second petitioner. The document in form 3 and 4 are necessary for transferring the school committee management by the Educational Authorities. The submission of those documents are the duty of the Educational Authorities but they did not come forward to produce those documents.

9.On the side of the respondents, it is stated that particulars of the documents are not specified and the list of documents are not furnished and the necessity for marking the documents was not stated in the affidavit. W.P.(MD)Nos.1352 and 1978 of 2014 are still pending. No notice to the respondents herein was given in the writ petitions and already connected documents were marked as Exs.C1 to C5. There is no necessity to recall the witness and to reopen the case and that after the amendment Act, in the year 2002, Order XVIII Rule 17(A) was omitted.

10.The learned counsel for the respondents relied on the judgment passed by the Hon'ble Supreme Court in the case of **K.K.Velusamy v. N.Palanisamy** reported in (2011) 3 CTC 422, wherein it is stated as follows:

"Civil Procedure Code, 1908 - Section 151 -
Inherent power - Section 151 cannot be routinely
invoked for reopening evidence or recalling witness -



Section 151 is not a substantive provision which creates or confers any power or jurisdiction on Courts – It merely recognises discretionary power inherent in every Court as a necessary corollary for rendering justice in accordance with law.”

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11.The learned counsel for the respondents relied on the judgment passed by the Hon'ble Supreme Court in the case of **P.K.Madeswaran v. T.S.Sivakumar** reported in **2011 2 MWN (Civ) 320**, wherein it is stated as follows:

"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."

12.On the side of the revision petitioners, it is stated that the revision petitioners have specifically mentioned that form 3 and 4 are to be marked. It is stated that an opportunity to the petitioners to put forth their case is to be given.

13.The suit is pending from the year 2012 and if really necessary, the revision petitioners might have sent for the documents much earlier. Now at the stage of arguments, the petitioners want to call for some documents. No reason can be attributed to the act of the revision petitioners except to fill up the lacunae in their case. There is no reason to recall the witness or for marking the documents.

14.In the above circumstance, the reasons stated in the revision petition are not satisfactory. There is no reason to interfere in the order of the trial Court. Hence, this Civil Revision Petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn



To

1.The District Munsif, Andipatti.

2.The District Educational Officer,
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Theni Taluk,
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