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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.2217 of 2019

and

C.M.P.(MD)No.11538 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.Sumathy ...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 order dated 31.10.2019 in I.A.No.2 of 2019 in O.S.No.40 of 2012 on the file of the 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.2 of 2019 in O.S.No.40 of 2012 dated 31.10.2019 on the file of the learned District Munsif, Andipatti.

3. The petitioners herein are the defendants 2 and 3, the respondents 1 to 4 herein are the plaintiffs, the fifth respondent herein is the first defendant and the respondents 6 and 7 herein are the defendants 4 and 5 in the suit. The respondents 1 to 4 herein filed a suit in O.S.No.40 of 2012, for the following reliefs:

"(i) granting relief of declaration to declare that the plaintiffs with the first defendant are entitled to the right of management in the school described in the schedule hereunder and for a consequential relief of direction directing the defendants 4 and 5 to restore the management of the school described in the schedule hereunder in favour of the plaintiffs and the first defendant;

(ii) granting relief of declaration to declare that the proceedings of the fourth defendant the transfer of educational agency from the father of the first plaintiff to in favour of the second defendant by order bearing Mu.Mu.No.146/A4/2006 dated 07.02.2006 is null and void;

(iii) granting relief of declaration to declare that the proceedings of the fourth defendant the transfer of educational agency of the subject school from the second defendant to third defendant from 03.11.2010 bearing Mu.Mu.No.s4132/A1/2010 dated 15.11.2010 is null and void;

(iv) grant a decree of permanent injunction restraining the third defendant from shifting the school described in schedule aided primary school, Kuppampatty to any other premises.

(v) directing the contesting defendants to pay the cost of the suit."

4. In the suit, the petitioners herein have filed a petition in I.A.No.2 of 2019 to reopen the defendants side evidence. The petition was dismissed by the trial Court. Against which, the revision petitioners preferred this revision petition.

5. The brief substance of the petition in I.A.No.2 of 2019 are as follows:

The plaintiffs concluded their arguments and the suit is ~~several arguments from the defendants side arguments. The plaintiffs made arguments~~



against the averments in the plaint without filing any relevant records. The documents relied by the defendants 2 and 3 are available with the defendants 4 and 5 and the file was produced before this court in W.P.(MD)No.1978 of 2014. The defendants 4 and 5 remained exparte and it is necessary to mark those documents, for which the defendants side evidence is to be re-opened.

6.The substance of the counter in I.A.No.2 of 2019 is as follows:

The I.A. Petition was filed at the stage of arguments that too after the completion of the plaintiffs side arguments. It is wrong to state that the petitioners came to know certain aspect only at the time of arguments, is nothing but a technic to fill up the lacunae. W.P.(MD)Nos.1362 and 1978 of 2014 are relating to nominating an officer to discharge the functions of 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 officers and one Najajothi was examined as P.W.2 and Exs.C1 to C5 were marked on 07.12.2018. The petitioners failed to mark any documents at the time of evidence 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. This petition is 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 petitioners 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 this documents as it may cause inconvenience to the respondents.

9.On the side of the respondents, it is stated that the particulars of the documents required are not specified and the list of documents are not furnished and the relevancy of the documents are 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 and that the petition is to be dismissed.



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."

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 his case is to be given.

13.It is seen that the revision petitioners want to mark form 3 and 4 in the suit. The suit is pending from the year 2012 and if at all the revision petitioners are interested in marking the said documents, they would have obtained the copies of those documents under the RTI Act. But they have failed to do so. How those documents are vital to substantiate the case of the defendants is not stated in the petition. The Educational Authorities passed an order and the order was already marked before the Court. It is seen that the case is pending at the stage of defence side arguments and that to avoid arguing the case, the revision petitioners filed this petition only to fill up the lacunae in the case and it is just a delaying tactic adopted by the petitioners herein. Moreover it is for the plaintiffs to prove the case. In the above circumstance, there is no necessity to reopen the case.

14.There is nothing sufficient enough to interfere in the order passed by the trial Court. Hence, this Civil Revision Petition



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is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Mrn

To

1.The District Munsif, Andipatti.

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

3.The Assistant Elementary Educational Officer,
Meenkshiamman Kovil,
Andipatti Town,
Andipatti Taluk,
Theni District.

+1 CC to Mr.M.GNANAGURUNATHAN, Advocate (SR-2605[F] dated 23/01/2020)

+1 CC to Mr.M.A.M.RAJA, Advocate (SR-2617[F] dated 23/01/2020)

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