



C.R.P.(PD)Nos.800 and 801 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.800 and 801 of 2016
and C.M.P.Nos.4436 and 7498 of 2016

M.Elangovan

.. Petitioner
in both CRPs.

Vs.

P.Gurusamy (died)

1.K.Padmanaban

2.Santhamani

3.Jothi

4.Sangeetha

5.G.Prakash

.. Respondents
in both CRPs.

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decretal orders dated 05.12.2015 in I.A.Nos.1148 and 1149 of 2015 in O.S.No.180 of 2013 on the file of I Additional District Munsif Court, Erode.



C.R.P.(PD)Nos.800 and 801 of 2016

In both CRPs.

For Petitioner : Mr.R.T.Doraisamy

For R1 : No appearance

For R2 and R5 : Mr.V.Regunathan

For R3 and R4 : No appearance

COMMON ORDER

(The matter is hearing through Video-conferencing/Hybrid mode)

Civil Revision Petitions are filed against the fair and decretal orders dated 05.12.2015 in I.A.Nos.1148 and 1149 of 2015 in O.S.No.180 of 2013 on the file of I Additional District Munsif Court, Erode.

2.The petitioner is plaintiff in O.S.No.180 of 2013 on the file of I Additional District Munsif Court, Erode. The petitioner filed the said suit against the respondents for injunction restraining the respondents from trespassing into the suit properties or dispossessing the petitioner from the suit properties till he is evicted under due process of law. The 1st



C.R.P.(PD)Nos.800 and 801 of 2016

respondent herein, who is 2nd defendant in the suit filed written statement and the respondents are contesting the suit. The trial commenced. The petitioner and respondents let in evidence and closed their side. The suit was posted for arguments. At that stage, the petitioner filed two applications in I.A.No.1148 of 2015 under Section 151 of C.P.C. to reopen the evidence on the side of the respondents to cross-examine D.W.2 and to mark some more documents and I.A.No.1149 of 2015 under Order XVIII Rule 17 read with Section 151 of C.P.C. to recall D.W.2 for the purpose of further cross-examination.

3. According to the petitioner, on the date, when D.W.2 was cross-examined, he could not attend the Court as he was not well. He obtained certain documents and handed over to his Advocate, after going through the said documents, it was found that previous proceedings were not brought to the notice of the Court and certain important questions have to be put to D.W.2.



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

4.The 1st respondent herein filed separate counter affidavits in both the applications denying all the averments in the affidavits and stated that D.W.2 was cross-examined by counsel for the petitioner at length and present applications are filed only to fill up lacunae. When the suit was posted for arguments, the petitioner has come out with present applications only to drag on the proceedings and prayed for dismissal of the said I.As.

5.The learned Judge considering the averments in the affidavits, counter affidavits and materials on record, dismissed both the applications.

6.Against the said order of dismissal dated 05.12.2015 in I.A.Nos.1148 and 1149 of 2015 in O.S.No.180 of 2013, the present Civil Revision Petitions are filed.

7.The learned counsel appearing for the petitioner reiterated the averments in the affidavits filed in support of the above applications and



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

further contended that 1st defendant entered into registered lease agreement for five years with the petitioner and based on the said lease agreement, the petitioner improved the petition premises by spending huge amount. There are certain irregularities done in the sale proceedings that took place before the Debts Recovery Tribunal and D.W.2 was not cross-examined on that line due to lack of instructions from the petitioner. The petitioner came to know the irregularities that took place in the sale proceedings only after closing the evidence of D.W.2. The learned Judge erred in holding that petitioner filed applications only to fill up lacunae in the suit. The learned Judge erred in holding that petitioner has not utilised the opportunity given to him for cross-examination of D.W.2 and hence, he cannot be allowed without considering the fact that petitioner got the materials only after cross-examination of D.W.2 was over. No prejudice will be caused to the respondents by allowing the applications. The learned counsel appearing for the petitioner in support of his contentions, relied on the order of this Court reported in **2004 (2) MLJ 581 [The Executive Officer vs. Max**



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

Well Apparel Industries] and submitted that if party gives sufficient reason to reopen the case, opportunity must be given to reopen and recall the witness and prayed for allowing both the applications.

8.Though the 1st respondent entered appearance through counsel, there is no representation for him, when the matter is taken up for hearing.

9.Though notice has been served on the respondents 3 and 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 2 and 5 and perused the entire materials on record.



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

11.From the materials on record, it is seen that it is the case of the petitioner that he is tenant under 1st defendant, 1st defendant leased out the properties by registered lease agreement for five years and the petitioner is in peaceful possession and enjoyment of the suit properties. The petitioner came to know that 1st defendant is making arrangement to sell the suit properties to the 1st respondent herein. The 1st defendant insisted the petitioner to vacate and surrender the possession of the suit properties to the 1st respondent. Since the petitioner has invested huge amount by developing the property, he filed suit for injunction restraining the 1st defendant and respondents herein from trespassing into the suit properties or dispossessing him from the suit properties till he is evicted under due process of law. The 1st respondent filed written statement. After completion of evidence by petitioner and respondents, when the suit was posted for arguments, the petitioner filed two applications to reopen the evidence of respondents and recall D.W.2 for further cross-examination.



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

12.From the impugned orders of the learned Judge, it is seen that I.A.No.467 of 2015 was filed for summoning D.W.2 to give evidence and the said application was allowed on 28.04.2015. Summons were issued to D.W.2 and he was examined in chief on 04.09.2015. The suit was adjourned to 14.09.2015. The counsel for the petitioner cross-examined D.W.2 at length. The evidence of parties were closed and suit was posted for arguments. In the applications filed by the petitioner for reopening and recalling D.W.2, the petitioner has not given any particulars of documents and he has not stated as to when he got the documents. The petitioner was aware of the order dated 28.04.2015 in I.A.No.467 of 2015 for issuing summons to D.W.2 to appear and to give evidence. Further, the petitioner was aware of the SARFAESI proceedings before the Debts Recovery Tribunal, when the 1st respondent filed written statement. D.W.2 was examined after five months of order dated 28.04.2015 passed in I.A.No.467 of 2015 i.e., on 04.09.2015 in chief and 10 days after counsel for petitioner cross-examined D.W.2. In the grounds of C.R.Ps., the petitioner has mentioned that based on the lease



C.R.P.(PD)Nos.800 and 801 of 2016

deed entered into between the petitioner and 1st defendant, petitioner has spent huge amount for improving petition premises and there are certain irregularities in conducting public auction before the Debts Recovery Tribunal. This stand was not taken by the petitioner before the learned Judge in the applications filed to reopen and recall D.W.2.

13.As per Order XVIII Rule 17 of C.P.C., the Court has power to examine any person and recall any witness already examined. The Court has this power for clarification to decide the issue in the suit. This power can be exercised sparingly in appropriate cases. At the same time, a witness cannot be recalled as a matter of right. It is discretionary power of the Court, which has to be exercised judicially. In the present case, it is seen from the impugned orders of the learned Judge that counsel for the petitioner before the trial Court has fully examined D.W.2. In the affidavits filed in support of above applications, the petitioner has not mentioned about the lease deed entered between the petitioner and 1st defendant, improvement made by him and irregularities in the sale



C.R.P.(PD)Nos.800 and 801 of 2016

conducted in the Debts Recovery Tribunal proceedings. The petitioner has not mentioned when the lease deed was entered, when sale was conducted by Debts Recovery Tribunal and when he came to know about the irregularities in the sale proceedings took place before the Debts Recovery Tribunal. The petitioner except stating that he had obtained certain records, entrusted the same with counsel and on perusal of records, the petitioner came to know that the previous proceedings were not brought to the notice of this Court and some important questions have to be put to the witness, no valid reason has been given. The reason given by petitioner is not acceptable for reopening and recalling witness. In view of the same, the order of this Court relied on by the learned counsel appearing for the petitioner in **2004 (2) MLJ 581** referred to above does not advance the case of the petitioner. The learned Judge has considered all the above materials, exercised his power properly and dismissed both the applications. There is no error or irregularity in the impugned orders of the learned Judge warranting interference by this Court.



C.R.P.(PD)Nos.800 and 801 of 2016

WEB COPY

14.For the above reasons, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

14.12.2021

kj

To

I Additional District Munsif, Erode.



WEB COPY



C.R.P.(PD)Nos.800 and 801 of 2016

V.M.VELUMANI, J.

kj

C.R.P.(PD)Nos.800 and 801 of 2016
and C.M.P.Nos.4436 and 7498 of 2016

14.12.2021