

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2021

Pronounced on : 05.08.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.Nos.574 & 575 of 2018
and CMP.Nos.3095 & 3096 of 2018

CRP.PD.No.574 of 2018

M/s.Vijayalakshmi Palanisamy Charitable Trust
Rep. by its Managing Trustee,
No.1996-A, Krishna Colony,
Singanallur,
Coimbatore – 641 005

..Petitioner

Vs.

- 1.Arulmigu Arunachaleswarar
Tirukkcoil,
Tiruvannamalai
Rep. by its Joint Commissioner /
Executive Officer,
Temple Premises, Tiruvannamalai
- 2.K.Rathinasamy
- 3.K.Sathasivam
- 4.K.V.R.Nandakumar
- 5.Chidambaram Natarajar Temple,
Chidambaram
Rep. by its Secretary,
Chidambaram
Cuddalore District

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order and decretal order dated

20.10.2017 made in IA.No.600 of 2017 in OS.No.422 of 2014 made by
the I Additional District and Sessions Judge, Coimbatore

For Petitioner : Mr.N.Manokaran

For Respondents

For R1 : Mr.A.K.Sriram
for Mr.A.K.Kailasam & Associates

R2 to 4 : notice served

R5 : No appearance

CRP.PD.No.575 of 2018

M/s.Vijayalakshmi Palanisamy Charitable Trust
Rep. by its Managing Trustee,
No.1996-A, Krishna Colony,
Singanallur,
Coimbatore – 641 005

..Petitioner

Vs.

- 1.Arulmigu Arunachaleswarar
Tirukkcoil,
Tiruvannamalai
Rep. by its Joint Commissioner /
Executive Officer,
Temple Premises, Tiruvannamalai
- 2.K.Rathinasamy
- 3.K.Sathasivam
- 4.K.V.R.Nandakumar
- 5.Chidambaram Natarajar Temple,
Chidambaram
Rep. by its Secretary,
Chidambaram
Cuddalore District

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the
Constitution of India against the order and decretal order dated

20.10.2017 made in IA.No.601 of 2017 in OS.No.422 of 2014 made by the I Additional District and Sessions Judge, Coimbatore

For Petitioner : Mr.N.Manokaran

For Respondents

For R1 : Mr.A.K.Sriram
for Mr.A.K.Kailasam & Associates

R2 to 4 : notice served

R5 : No appearance

COMMON ORDER

These civil revision petitions are filed against the order and decretal order dated 20.10.2017 made in IA.Nos.600 & 601 of 2017 in OS.No.422 of 2014 on the file of the I Additional District and Sessions Judge, Coimbatore, thereby allowing the petition to reopen and the petition seeking permission to receive documents.

2. In both the civil revision petitions, the petitioner is the fourth defendant and the first respondent is the plaintiff. The first respondent filed suit for declaration declaring that the order passed in Trust OP.No.267 of 2006 dated 24.04.2007 is non-est in the eye of law and not binding on the plaintiff and the fifth defendant. The first respondent also prayed for

declaration declaring that the sale deed dated 18.06.2007 executed by the defendants 1 and 2 in favour of the fourth defendant is null and void and declaring that the sale deed dated 26.10.2007 executed by the third defendant in favour of the fourth defendant is null and void with permanent injunction. He also prayed for recovery of possession in respect of the suit property from the fourth defendant. While pending the suit, the first respondent filed petitions to reopen and seeking permission to receive documents. Both the petitions were allowed and aggrieved by the same, the present civil revision petitions have been filed.

3. The learned counsel for the petitioner submitted that the documents which are sought to be produced were neither referred to in the plaint nor specific pleadings were allocated with respect of the documents. Even in the cause of action and also from the entire averments of the plaint, the first respondent did not even whisper about the documents. The plaint should be presented in terms of Order 7 Rule 1 of CPC. It requires to give particulars and details about the documents which should be contained in the plaint. That apart, Order 7 mandates production of documents along with plaint. As such the first respondent shall include those documents which are not

sought to receive in the list of documents of the plaint and shall produce it into the Court when the plaint was presented. He further submitted that the first respondent filed petition in IA.No.576 of 2016 for the very same relief and the same was withdrawn unconditionally and dismissed.

3.1 He further submitted that the first respondent came to understand about the documents only after filing the suit and as such, admittedly the first respondent did not whisper about those documents and not relied in the plaint or referred upon in the plaint averments. Therefore, the present applications are not at all maintainable under Order 7 Rule 14 (3) of CPC. Rule 14 of Order 7 of CPC contains that the documents relied on in the plaint. Therefore, the application filed under Order 7 Rule 14 or Section 151 of CPC is applicable only with reference to those documents which are already relied upon or referred to in the plaint. Therefore, totally strange or unknown documents cannot be introduced during pendency of the trial. In fact, both the side evidence were over and arguments also over and when the suit was posted for filing written submissions on either side, the first respondent filed these petitions. The earlier petition in IA.No.576 of 2016 was withdrawn after filing the counter unconditionally. Therefore, both the

petitions are nothing but very same attempt just to drag the proceedings. Therefore, he prayed for dismissal of those petitions. In support of his contention, he relied upon the following judgments:

(i) ***Bagai Construction Vs. Gupta Building Material Stores***

reported in **2013 (14) SCC 1**

(ii) ***Ram Rati Vs. Mange Ram*** reported in **2016 (11) SCC 296**

(iii) ***Gayathri Vs. M.Girish*** reported in **2016 (4) SCC 142**

4. Per contra, the learned counsel for the first respondent submitted that the first respondent filed suit for declaration and injunction as against the petitioner and other respondents herein on the ground that the suit property was dedicated to the first respondent temple by Karuppa Gounder by entrusting the suit property with the second and third respondents herein is being the father under the trust deed dated 02.05.1973, by setting apart income from the suit property exclusively for performances every 'Karthigai' in the fifth respondent temple. The first respondent filed petition in IA.No.576 of 2016 seeking permission to file certified copy of the petition in OA.No.64 of 1986 filed by one, Narayanasamy before the Deputy Commissioner of HR&CE for Coimbatore for framing a scheme for

the proper administration of the suit property against the said Karuppa Gounder and to receive the same. However, upon receipt of the counter filed by the petitioner herein, thereby opposing the application on the ground that the said document was not filed along with the plaint and he has questioned the genuineness and authenticity of the same, therefore the first respondent not pressed the said application and the same was dismissed as not pressed. Thereafter, the first respondent summoned original petition in OA.No.67 of 1986 and it was marked through PW2 as Ex.A13. After conclusion of the arguments of the petitioner as well as the other defendants, the first respondent came to understand about the counter filed in OA.No.67 of 1986 by the said Karuppa Gounder and obtained certified copy of the same on 28.07.2017. Therefore, the first respondent filed petitions to reopen and seeking permission to receive the said document.

4.1 He further submitted that it is not total bar to a party to the suit proceedings invoking Section 151 of CPC to bring new evidence at any stage of the case before judgment is pronounced. As held by the Hon'ble Supreme Court of India in the case of **Ram Rati Vs. Mange Ram** reported in **2016 (11) SCC 296**, the document which was sought to be produced is

relevant and necessary for the just decision of the case, since the case of the first respondent is that the suit property is religious endowment attached with the first respondent's temple. Therefore, it has to be decided that whether the suit property is endowed by the father of the defendants 1 and 2 and the same is religious charity or not. Therefore, the court below rightly allowed the petition. In fact, the court below framed one of the issue that whether the suit property was endowed absolutely to the plaintiff's temple. When the original petition in OA.No.67 of 1986 was marked as Ex.A13, there is absolutely no prejudice to the petitioner herein to mark the counter filed by the father of the defendants 1 and 2. That apart, after allowing the said applications, PW3 was examined and those documents were marked as Ex.A20 and Ex.A21 and posted the suit for cross examination. At that juncture, the petitioner preferred these civil revision petitions. Therefore, he prayed for dismissal of the civil revision petition.

5. Heard, Mr.N.Manokaran, the learned counsel for the petitioner, and Mr.A.K.Sriram, the learned counsel for the first respondent.

6. The petitioner is the fourth defendant and the first respondent is the plaintiff. The first respondent filed suit for declaration declaring that the order dated 24.04.2007 passed in trust OP.No.267 of 2006 is non-est in the eye of law and also seeking declaration of the sale deed dated 18.06.2007 executed by the first and second defendants in favour of the fourth defendant as null and void. The first respondent also sought for declaration declaring that the sale deed dated 26.10.2007 executed by the third defendant in favour of the fourth defendant is null and void with the permanent injunction and also recovery of possession from the fourth defendant. When the suit was posted for further arguments of the defendants side, the first respondent came forward with the petitions to reopen and to receive documents. Admittedly, the documents sought to be received by the first respondent are not mentioned in the plaint averments. The first respondent did not even whisper about those documents and not annexed along with the plaint.

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7. The first respondent already filed petition in IA.No.576 of 2016 to receive additional documents i.e. the petition in OA.No.67 of 1986. After filing the counter by the petitioner herein, the first respondent not pressed

the said application. Thereafter by summoning the other witness, copy of the petition in OA.No.67 of 1986 was marked as Ex.A13. After completion of evidence and closing the arguments on the side of the plaintiff, when the suit was posted for further arguments on the side of the defendants on 12.08.2017, at that juncture, the first respondent herein filed these applications to reopen and to summon the witness and to mark the document which was obtained by the first respondent from the Office of the Joint Commissioner, HR& CE Department as certified copy.

8. The learned counsel for the petitioner vehemently contended that the document sought to receive was not annexed in the plaint and did not whisper about the said document as contemplated under Order 7 Rule 14 of CPC. When it being so, the present impugned petition filed under Order 7 Rule 14 (3) of CPC read with 151 CPC is not maintainable. In fact, the first respondent already filed petition in IA.No.576 of 2016 by invoking the provision under Order 7 Rule 14 of CPC and the same was dismissed as not pressed. Therefore, Order 7 of CPC mandates production of document along with the plaint on which the plaintiff wanted to sue the defendant. The documents can be produced later, but the plaint should aver about the said

document. It is a strange document to the plaint and the first respondent cannot take advantage of Section 151 of CPC by misinterpreting the same. In this regard, the learned counsel for the petitioner relied upon the judgment in the case of ***Bagai Construction Vs. Gupta Building Material Stores*** reported in ***2013 (14) SCC 1***, wherein it is held as follows:

9) *In Vadiraj Naggappa Vernekar (dead) through LRs. vs. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410, this Court had an occasion to consider similar claim, particularly, application filed under Order XVIII Rule 17 and held as under:*

“25. In our view, though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said Rule is to enable the court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined.

28. The power under the provisions of Order 18 Rule 17 CPC is to be sparingly exercised and in appropriate 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 CPC.

29. 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.

9. He also relied upon the judgment in the case of **Ram Rati Vs. Mange Ram** reported in **2016 (11) SCC 296**, wherein it is held as follows:

11. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. '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.

16. Some good guidance on invocation of Section

151 of the CPC to reopen an evidence or production of fresh evidence is also available in K.K. Velusamy (supra).

To quote paragraph-14:

“14. 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 reopening 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 on 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.”

17. Vadiraj (supra) and K.K. Velusamy (supra) have also found affirmation by this Court in Bagai Construction Through its Proprietor Lalit Bagai v. Gupta Building Material Store³.

18. *The settled legal position under Order 18 Rule 17 read with Section 151 of the CPC, being thus very clear, the impugned orders passed by the trial court as affirmed by the High Court to recall a witness at the instance of the respondent “for further elaboration on the left out points”, is wholly impermissible in law.*

10. He also relied upon the judgment in the case of **Gayathri Vs. M.Girish** reported in **2016 (4) SCC 142**, wherein it is held as follows:

9. *In the case at hand, as we have stated hereinbefore, the examination-in-chief continued for long and the matter was adjourned seven times. The defendant sought adjournment after adjournment for cross-examination on some pretext or the other which are really not entertainable in law. But the trial Court eventually granted permission subject to payment of costs. Regardless of the allowance extended, the defendant stood embedded on his adamant platform and prayed for adjournment as if it was his right to seek adjournment on any ground whatsoever and on any circumstance. The non-concern of the defendant-petitioner shown towards the proceedings of the Court is absolutely manifest. The disregard shown to the plaintiff's age is also visible from*

the marathon of interlocutory applications filed. A counsel appearing for a litigant has to have institutional responsibility. The Code of Civil Procedure so command. Applications are not to be filed on the grounds which we have referred to herein- above and that too in such a brazen and obtrusive manner. It is wholly reprehensible. The law does not countenance it and, if we permit ourselves to say so, the professional ethics decries such practice. It is because such acts are against the majesty of law.

12. In the case at hand, it can indubitably be stated that the defendant-petitioner has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. We are constrained to say the virus of seeking adjournment has to be controlled. The saying of Gita “Awake! Arise! Oh Partha” is apt here to be stated for guidance of trial courts.

The Hon'ble Supreme Court of India held that the provision under Order 18 Rule 17 of CPC are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. It is to be sparingly exercised and in appropriate 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. Further held that during the entire trial those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those documents on record when the judgment was reserved and only thereafter, in order to improve his case, the plaintiff came forward with such an application to avoid the final judgment against it. Such course is not permissible even with the aid of Section 151 of CPC.

11. In the case on hand, the document which is sought to be received also remained with the Office of the first respondent and as such they could have very well produced along with the plaint and also when summoning PW2, they could have very well marked the same. When the suit was posted for written submission of defendants, the first respondent came forward with the present impugned applications. Though no prejudice is caused to the petitioner herein, it is not a permissible ground to invoke Order 18 Rule 17 read with Section 151 of CPC. As condemned by the Hon'ble Supreme Court of India, the first respondent has acted in a manner to cause colossal insult to justice and to the concept of speedy disposal of civil litigation. Therefore, the present applications are nothing but fill up the lacuna and it is not permissible under law. Without considering those aspects, the court below allowed the petitions and they are liable to be set aside.

05.08.2021

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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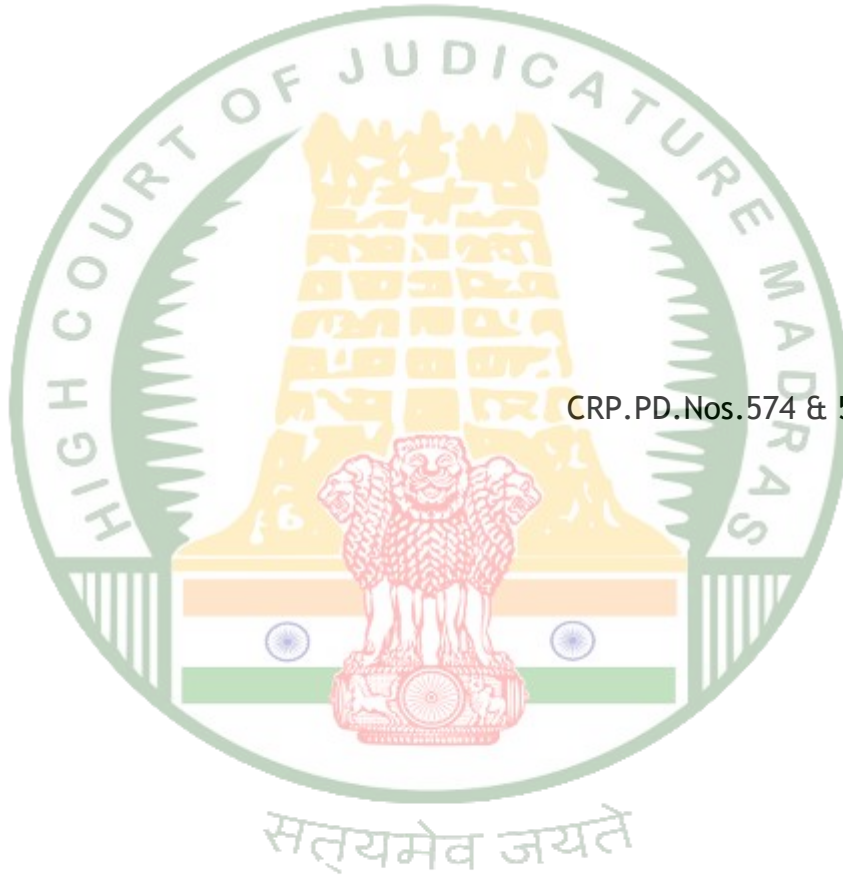
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G.K.ILANTHIRAIYAN,J.

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To

The I Additional District and Sessions Judge,
Coimbatore



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