

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2306 of 2020
and
C.M.P.No.14491 of 2020

B.K.Mani (died)
1. M.Thangaraj
2. M.Backiam
3. M.Durga
4. M.Latha ... Petitioners/Defendants 2 to 5

Vs.

K.N.John
Managing Director,
M/s.Sri Iyyan Textile Mills Pvt. Ltd.,
28/2, 7th Cross - Bharathi Park,
Saibaba Colony, Coimbatore,
Coimbatore District. ... Respondent/Plaintiff

Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.10.2020 made in I.A.No.3 of 2020 in O.S.No.184 of 2012 on the file of the Sub Court, Bhavani.

For Petitioners : Ms.Indira
For Mr.N.Manoharan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 09.10.2020 passed in I.A.No.3 of 2020 in O.S.No.184 of 2012 on the file of the Sub Court, Bhavani.

2. The case of the petitioners is that the suit was filed for recovery of possession in the year 2012. The respondent filed their written statement on 24.09.2018. The Trial Court after framing the issues posted the matter for trial. During the course of trial, P.W.1 was examined and cross examined, and thereafter, the evidence of the respondent/plaintiff was closed on 18.02.2020. It was again posted for further evidence on 27.02.2020. On the day, the respondent herein filed

I.A.No.3 of 2020 for recalling his witness and for posting further to file a document which came to his possession only now which is a sale deed.

3. The main contention of the petitioners is that as the P.W.1 was already cross examined by the petitioner and he had already admitted his defence version, he cannot now file a petition to fill up the lacunae, which is not permissible in law. As per the Code of Civil Procedure which was amended w.e.f. 01.07.2002, Order 18 Rule 17A and Order 13 Rule 2 CPC had been deleted by the Legislature. But without knowing the said fact, the Trial Court allowed the petition filed for recalling the witness P.W.1, which is against the law laid by the Hon'ble Supreme Court in its various judgments. Hence, the learned counsel for the petitioners prayed for dismissal of the order passed in I.A.No.3 of 2020 in O.S.No.184 of 2012.

4. Heard the learned counsel for the petitioners and perused the documents available on record.

5. The petition filed by the respondent was to recall himself under Order 18 Rule 17 CPC, which contemplates as under :

"The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such question to him as the Court thinks fit."

6. It is the case of the respondent that at the time of chief examination, he pledged the sale deed in order to obtain loan from the bank and he was not in a position to produce the said sale deed. Therefore he filed the recall petition to mark the same through P.W.1.

7. The Court below has considered the objections raised by the respondents' counsel that the petitioner had not mentioned the document number and the date of execution of document in the plaint. Hence the petition is not maintainable. The Court below has rightly observed that if the petition is allowed, the nature of the suit will not be changed. Further, the respondents would have opportunity to question the veracity of the documents.

8. However, the petition was allowed subject to the payment of cost of Rs.3,000/- to the respondents on or before 16.10.2020. Aggrieved by the same, the petitioners have filed this petition before this Court by raising various grounds.

9. On perusal of the documents, it is seen that the respondent had purchased a property from the petitioners 20 years back and the document sought to be marked by him is of the year 2000. The said document may be the original document which was executed by the petitioners and the same can be

admitted by the Court subject to the veracity of the documents. Hence, the respondent can be given an opportunity to mark the same by recalling himself as a witness. Further, Order 18 Rule 17 CPC enables the Court to recall any witness who has been examined at any stage of a suit. Hence, this Court is of the considered view that there is no incorrectness, illegality or impropriety in the order passed by the Court below in recalling the witness P.W.1 when the matter is in preliminary stage. The judgments relied on by the learned counsel for the petitioners are not applicable to the present case on hand as the nature of those cases are different from the present case on hand.

10. In view of the above, this Civil Revision Petition is dismissed and the order of the Court below in I.A.No.3 of 2020 in O.S.No.184 of 2012 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

11. Since the matter is in a preliminary stage, the respondent is directed to file the document without making any further delay. After filing the document, the petitioner is at liberty to question the same, if they intend to question it. The respondent is further directed to pay the cost of Rs.3000/- imposed by the Court below to the petitioners on or before 15.02.2021, if not already paid.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

The Sub Court, Bhavani. सत्यमेव जयते

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 1186

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CA(CO)
GN(23/02/2021)