



WEB COPY

C.R.P.(MD)Nos.2744 to 2746 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.04.2021

Delivered On : 17.06.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD) (PD) Nos.2744 to 2746 of 2018

and C.M.P. (MD) No.12009 of 2018

Saravanan

Rep. By his power agent

Gurusamy

.. Petitioner/Petitioner/Plaintiff
in all C.R.Ps.

Vs.

Krishnan

.. Respondent/Respondent/Defendant
in all C.R.Ps.

Common Prayer: These Civil Revision Petitions are filed under Article 227 of Constitution of India, to set aside the fair and decreetal common order dated 20.07.2018 made in I.A.No.849 of 2018, 850 of 2018 and 851 of 2018 in O.S.No.35 of 2011 on the file of the learned Principal District Munsif Court, Aruppukottai.

For Petitioner(in all C.R.Ps.) : Mr.T.Antony Arul Raj

For Respondent(in all C.R.Ps.) : Mr.S.Parthasarathy

COMMON ORDER

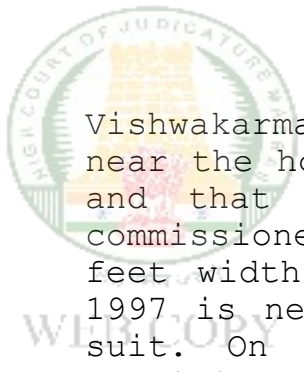
These Civil Revision Petitions have been filed against the common order passed in I.A.No.849 of 2018, 850 of 2018 and 851 of 2018 in O.S.No.35 of 2011 dated 20.07.2018, on the file of the learned Principal District Munsif Court, Aruppukottai.

2.The petitioner herein is the plaintiff and the respondent herein is the defendant. The petitioner herein has filed a suit in O.S.No.35 of 2011 before the learned Principal District Munsif, Aruppukottai for declaration and for injunction. Pending suit, the petitioner has filed petitions in I.A.No.849 of 2018 to 851 of 2018 for reopening the case and to recall the witness and for permission to mark additional documents.

3.The brief substance of the petitions in I.A.No.849 to 851 of 2018 is as follows:

The revision petitioner is the plaintiff. The case was adjourned for arguments. At this stage, the petitioner came to know that there was a previous litigations between the defendant and one

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



Vishwakarma Iyenthu vaguppu majana nirvaga sabai wherein the lane near the house of the defendant which was declared as a common lane and that the defendant was having 1½ feet in the lane. The commissioner report filed in that case reveals that the lane is 3 feet width. The judgment and decree of the suit in O.S.No.106 of 1997 is necessary for deciding the matter in issue in the present suit. On 21.09.1988, the defendant and his brother executed a partition deed wherein the measurement of the defendant's house and the measurement of the eastern side portion of the house were mentioned and that document is also necessary for deciding the case. Hence, permission should be granted to recall the witness for marking these two documents and to reopen the case.

4.The brief substance of the counter filed by the respondent is as follows:

The plaintiff did not mention anything in the plaint regarding the documents mentioned in those petition. When there is no pleadings, the petitioner is not entitled to adduce any evidence.

5.After hearing both sides, the trial Court dismissed the petitions. Against which, the petitioner has filed the Civil Revision Petitions before this Court.

6.On the side of the revision petitioner, it is stated that the suit was filed for declaration and for injunction regarding the first schedule of the property and for declaring the second schedule property, as the common pathway and to remove the encroachment in the second schedule property. Only recently the plaintiff came to know about the earlier suit between the defendant and the Vishwakarma Iyenthu vaguppu majana nirvaga sabai wherein a commissioner was appointed and the suit second schedule property was mentioned as a common pathway in the commissioner report and plan and that those documents are necessary for deciding the suit property. The trial Court counsel wrongly mentioned the section number in the petition. Instead of Order 7 Rule 14, Order 13 Rule 2 was wrongly mentioned by the counsel and the trial Court dismissed the petition merely because of the mentioning of the wrong section in the petition. There was no discussion regarding the merits of the petition in the impugned order. The right of the plaintiff cannot be deprived merely because a wrong Section was mentioned in the petition.

7.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **N.Mani v. Sangeetha Theatre and others** reported in (2004) 12 Supreme Court Cases 278, wherein it is stated as follows:

"Order passed by Govt. in exercise of power under the proviso granting exemption from operation of R.14-Absence therein of specific reference to the



exemption provision of S.11-Held, that by itself cannot be a ground for quashing the order.

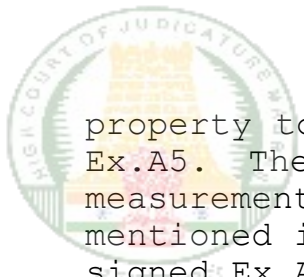
Administrative Law-Ultra vires-Defences to plea of ultra vires-validity under another provision-Existence of power somewhere enough-Absence of specific mention of it, held, would not vitiate the exercise of that power."

8.The learned counsel for the petitioner would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **T.Nagappa v. Y.R.Muralidhar** reported in **(2008) 5 Supreme Court Cases 633**, wherein it is stated as follows:

"What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the Court being the master of the proceedings must determine as to whether the application filed by the accused in terms of Sub-Section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the Court for obtaining its assistance with regard to summoning of witness, etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant."

9.In support of his contention, the judgment passed by this Court in the case of **A.Alamelu v. A.Krishnaveni** in **C.R.P. (MD)No.666 of 2016** is cited.

10.On the side of the respondent, it is stated that there was a partition deed in the year 1951, which was marked as Ex.A3 in the suit wherein south north common lane was mentioned. At that time, the property was divided in such a way that all the four brothers have property both on the eastern and western side of a lane. Subsequently, the brothers realized the inconvenience in the partition and they gave up the partition deed, Ex.A3. As the property is having pathway on all the four sides, they subsequently divided the property differently and that the north eastern portion was given to Kundan, the north western portion was given to Oorukavalan, the south eastern portion was allotted to Pitchai and the south western portion was allotted to pathinettom padi aachari. All of them have access to the main road. The first schedule property belongs to the branch of Samidurai aachari. He sold the property to one Igbal through Ex.A4. Igbal again in turn sold the



property to the plaintiff, who is the grandson of Samidurai through Ex.A5. The measurement in Ex.A4 is 15 x 30 feet whereas the measurement mentioned in Ex.A5 is 15 x 35 feet. The boundary mentioned in Ex.A4 on the eastern side is the common wall. P.W.1 has signed Ex.A4 as a witness. The oral evidence of P.W.1 is against the case of the plaintiff. To fill up the lacuna in the suit, the plaintiff is now trying to drag on the matter by filing unnecessary documents.

11.It is further stated that O.S.No.106 of 1997 was a suit between the defendant and Vishwakarma Iyenthu vaguppu majana nirvaga sabai regarding the lane I.e., on the eastern side of the defendant's property. That property is no way connected with the second item of the suit property. The second item of the suit property is alleged to be in between the plaintiff and defendant's property I.e., east of the plaintiff's property and west of the defendant's property. The document regarding the eastern portion of the defendant's property is no way connected with the suit property and that the document is not necessary to be marked in the present suit.

12.On the side of the petitioner, it is stated that the respondent has not elicited all these points in the counter filed before the trial Court. The respondent cannot raise new points in this petition.

13.On the side of the respondent, it is stated that the petitioner has not mentioned anything regarding the suit and decree in O.S.No.106 of 1997 the decree dated 21.08.1988 or in the plaint. The petitioner is trying to introduce new points, which are not stated in the plaint. No evidence can be adduced without any pleadings. The suit is at the stage of arguments.

14.The learned counsel for the respondent would rely upon the judgment passed by this Court in the case of **S.Sivakumar v. P.Venkatachalam** reported in **2012 (4) Law Weekly 49**, wherein it is stated as follows:

"The power is discretionary and should be used sparingly in appropriate cases to enable the Court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. It is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded."



15. On the side of the respondent, it is stated that the party to the suit cannot be permitted to fill up the lacunas under Order 18 Rule 17 of CPC and that only when there is a necessity for clarification, the proviso under Order 18 Rule 17 can be invoked. In support of his contention, the judgment passed by this Court in the case of **S.Sivakumar v. P.Venkatachalam** reported in **2012 (4) Law Weekly 49**, wherein it is stated as follows:

"Moreover, when Order 18 Rule 17 is primarily a provision enabling the Court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, and as, in the instant case, the need for clarification of any issue or doubt did not arise for the Court below to recall the witness, if the applications filed by the petitioner are allowed, it will amount to abuse of process of court and the very purpose of cross-examination will stand negated, thereby causing much prejudice to the respondent as well."

16. On the side of the respondent, it is stated that the party to the suit cannot be permitted to fill up the omission in already adduced evidence and that the provision under Order 18 Rule 17 has to be used sparingly in an appropriate case. The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Bagai Construction v. Gupta Building material store** reported in **(2013) 14 SCC**, wherein it is stated as follows:

"Recall of witness-Scope and object of- Held, it enables courts to clarify any doubts regarding evidence led by parties-it is not meant to fill up omissions in already adduced evidence-power conferred upon court under Order 18 Rule 17 can be used either on application by parties or suo motu but it has to be used sparingly in an appropriate case-Witness cannot be recalled and re-examined merely on the ground that no prejudice would be caused to the other side-power thereunder if used in a routine manner would defeat the very purpose of amendments to Civil Procedure Code-where application is bona fide and leading of additional evidence would clarify doubts of the court and earlier non-production was for valid reasons, then recalling of witness is permissible."

17. On the side of the respondent, it is stated that the evidence with regard to matter non pleaded cannot be permitted. The learned counsel for the respondent would rely upon the judgment passed by the Hon'ble Supreme Court in the case of **Executive Officer v. Chandran and Others** reported in **2017 (2) CTC 678**, wherein it is stated as follows:



"When there was no pleading in the plaint regarding title of Padmanabhan by any other earlier Deed except the claim of inheritance the Trial Court rightly discarded the Deed dated 29.07.1974. It is further relevant to note that plaintiff's application made for amendment of the plaint in the Appellate Court was considered and rejected by the Appellate Court. The evidence, with regard of which there is no pleading, has rightly been discarded by the trial Court. Unless there is a pleading especially with regard to the source of title, the defendant of a suit has no opportunity to rebut such pleading, thus an evidence with regard to which there is no pleading cannot be relied by the plaintiff for setting up his title in a suit."

18.The second item of the suit property is described in the plaint as situated on the western side of the defendant's property. The document, which the petitioner wants to mark is regarding a lane on the eastern side of the defendant's property. The partition document and the decree in the previous case were not mentioned in the plaint. The petitioner cannot fill up the lacunas in the case, that too after the completion of the trial. The petitioner is not entitled to adduce evidence regarding points that are not pleaded in the plaint. Even after ignoring the mistake in the Section of law quoted in the petitions, there is no merits in the claim of the petitioner.

19.In the above circumstances, there is nothing sufficient enough to interfere in the common order passed in I.A.No.849 of 2018, 850 of 2018 and 851 of 2018 in O.S.No.35 of 2011 dated 20.07.2018, on the file of the learned Principal District Munsif Court, Aruppukottai. Hence, these Criminal Revision Petitions are dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Principal District Munsif Court, Aruppukottai.

+1 CC to M/s.S.PARTHASARATHY, Advocate (SR-19446[F] dated 17/06/2021)

C.R.P.(NPD) (MD)Nos.2744 to 2746 of 2018

17.06.2021

srk(CO)

TR(28.06.2021) 7P 3C