



C.R.P.(PD).Nos.541 & 542 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.541 & 542 of 2016
and C.M.P.No.2709 of 2016

Shanmugam

.. Petitioner in both C.R.Ps.

Vs.

1.Saraswathi (died)

2.Thulasi

3.Vasanth

4.Periyasamy

5.Anandhi

6.Amudha

7.Kalpana

.. Respondents in both C.R.Ps.

*(respondents 4 to 7 brought on record as
LRs of the deceased R1, vide court order
dated 23.12.2021 made in C.M.P.Nos.1546,
1550 & 1554 of 2020 in C.R.P.No.541/2016
and C.M.P.Nos.1524 to 1526 of 2020 in
C.R.P.No.542/2016)*

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal orders dated 29.10.2015 made in I.A.Nos.708 & 709 of 2014 in O.S.No.537 of 2008 on the file of the Sub Court, Tiruchengode.



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For Petitioner : Mr.R.T.Vishnu
for M/s.N.Manokaran

For Respondents : No appearance (For R2)

Mr.B.Jawahar (For R3)

M/s.Amar D. Pandiya (For RR4 to 7)

COMMON ORDER

(The matter is heard through 'video conferencing')

These Civil Revision Petitions are filed against the fair and decreetal orders dated 29.10.2015 made in I.A.Nos.708 & 709 of 2014 in O.S.No.537 of 2008 on the file of the Sub Court, Tiruchengode.

2.The petitioner is 1st defendant in O.S.No.537 of 2008 on the file of the Sub Court, Tiruchengode. The 1st respondent/plaintiff filed the said suit against the petitioner and respondents 2 and 3 for partition and separate possession. The petitioner and respondents 2 and 3 filed written statement. Trial commenced. The evidence was let in by the 1st respondent, petitioner and respondents 2 and 3 and closed. At that stage, the 1st respondent filed two applications viz., I.A.No.708 of 2014 under



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Order XVIII Rule 17 and Section 151 of C.P.C., to recall D.W.1 for the purpose of further cross examination with regard to Exs.A3 and B1, on the side of the 1st respondent and I.A.No.709 of 2014 under Section 151 of C.P.C., to reopen the case for the purpose of further cross examination of D.W.1. According to the 1st respondent, due to inadvertence, certain questions relating to Exs.A3 and B1 were not put to D.W.1 in cross-examination. The omission was found out only when the 1st respondent was instructing her counsel in preparation for arguments and filed present two applications. The 2nd respondent remained exparte before the Tribunal. The 3rd respondent did not file any counter and endorsed no objection. The petitioner filed counter and denied all the averments. According to the petitioner, the evidence of D.W.1 was closed on 28.10.2013 and D.W.2 to D.W.4 were examined on behalf of the defendants and their evidences were closed on 12.11.2013, 25.02.2014 and 08.07.2014 respectively. The suit was posted for arguments on 05.08.2014. At that stage, the 1st respondent filed applications only with a view to protract the proceedings and prayed for dismissal of both the applications. The learned Judge, considering the materials on record, by



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two separate orders, held that in order to conduct full-fledged trial and in the interest of justice, one more opportunity must be given to the 1st respondent and allowed both the applications by two separate orders.

3. Against the said orders dated 29.10.2015 made in I.A.Nos.708 & 709 of 2014 in O.S.No.537 of 2008, the petitioner has come out with the present two Civil Revision Petitions. Pending Civil Revision Petitions, the 1st respondent died and respondents 4 to 7 were impleaded as her legal heirs in both the Civil Revision Petitions.

4. The learned counsel appearing for the petitioner submitted that in the written statement filed by him, he has stated that his father executed registered settlement deed dated 10.03.1975 and rectification deed dated 22.09.1975, settling item nos. 1 and 2 of the suit property in his favour, when he was a minor represented by his mother. The 1st respondent has not filed any reply or put questions with regard to the said documents. She voluntarily did not cross-examine D.W.1 relating to Exs.A3 and B1 and only to protract the proceedings, she has filed the present petitions.



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The impugned orders of the learned Judge without giving any reason is contrary to the provisions and prayed for setting aside the orders of the learned Judge and allowing the Civil Revision Petitions.

5.The learned counsel appearing for the respondents 4 to 7 made submissions in support of the orders of the learned Judge and prayed for dismissal of both the Civil Revision Petitions.

6.Heard the learned counsel appearing for the petitioner, 3rd respondent as well as the respondents 4 to 7 and perused the entire materials available on record.

7.Though notice has been served on the 2nd respondent and her name is printed in the cause list, there is no representation for her either in person or through counsel.

8.From the materials on record, it is seen that after the petitioner and respondents 2 and 3 let in evidence and closed their side, when the



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suit was posted for arguments, the 1st respondent has filed two applications viz., I.A.Nos.708 and 709 of 2014 to recall and reopen D.W.1 for further cross-examination respectively. As per Order XVIII Rule 17 of C.P.C., the Court can recall any witness which has been examined, at any stage of the suit, to put questions to him as the Court thinks fit. This provision is to enable the Court to clarify any issue or doubt by recalling any witness either *suo motu* or on application by any of the parties. In the present case, the 1st respondent has stated that certain questions are to be put to D.W.1 with regard to Exs.A3 and B1. The questions put are to clarify the issue and to enable the Court to finally decide the issue in the suit. The documents are already on the file and request of the 1st respondent is to cross-examine D.W.1 with regard to the documents Exs.A3 and B1, which are already on record. The learned Judge, considering the materials placed before him, in the interest of justice and to give one more opportunity to the 1st respondent to conduct full-fledged trial, allowed both the applications. The learned Judge has exercised his powers conferred on him under Order XVIII Rule 17 of C.P.C. properly by allowing the applications. There is no error in the



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orders of the learned Judge warranting interference by this Court.

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In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index :: Yes/No
gsa

To

The Subordinate Judge,
Tiruchengode.



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V.M.VELUMANI, J.

gsa

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