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C.R.P.No.2203 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 26.07.2022

Delivered On: 06.10.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.2203 of 2021

and

C.M.P.No.16700 of 2021

M.Govindasamy : Petitioner/Petitioner/Plaintiff in
O.S.No.531 of 2007

Vs.

1.Muthusamy
2.Subbathal : Respondents/Respondents 1 & 2/
1st and 2nd Defendants in O.S.No.531 of 2007
3.C.S.Natarajan : Respondent/3rd Respondent/3rd Defendant in
O.S.No.531 of 2007
4.Marimuthu : Respondent/4th Respondent
5.Veluchamy
6.Subramaniam
7.Ramalingam : Respondents/Respondents 5 to 7
8.Kanniyathal : Respondent/8th Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 02.09.2021 passed in I.A.No.739 of 2021 in O.S.No.531 of 2007 on the file of learned District Munsif, Dharapuram, Thirupur District and allow the same.

For Petitioner : Mr.V.Ragunathan

For Respondent 4 : Mr.N.Ponraj



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ORDER

WEB COPY This Civil Revision Petition had been filed to set aside the fair and decretal order dated 02.09.2021 passed in I.A.No.739 of 2021 in O.S.No.531 of 2007 on the file of learned District Munsif, Dharapuram, Thirupur District.

2.The learned Counsel for the Petitioner submitted that the Petition had been filed by the Plaintiff against the order of dismissal of I.A.No.739 of 2007 in O.S.No.531 of 2007 on the ground that it is a belated Petition and only to protract the proceedings. It is the contention of the learned Counsel for the Petitioner that he had filed Petition to examine witness to the sale agreement of the year 2003. Based on the sale agreement only, the sale was executed in favour of the Petitioner/Plaintiff in O.S.No.531 of 2007 regarding the *bona fide* of the sale. It is the case of the Petitioner that the Plaintiff evidence was closed *suo motu* by the Court. To meet the ends of justice, Petition under Section 151 of CPC filed by the Petitioner to reopen the Plaintiff's evidence was dismissed based on the objections by the defendant.

3.The learned Counsel for the fourth Respondent submitted that the Petition was rightly dismissed by the learned District Munsif, Dharapuram, as



the Plaintiff had cross-examined D.W-1. At that stage, this Petition was filed only when the case was posted for arguments. The Petitioner was not diligent.

4.In support of his contention, the learned Counsel for the fourth Respondent relied on the following rulings:

4.1.In the case of ***Bagai Construction -vs- Gupta Building Material Store*** reported in ***(2013) 14 SCC 1*** wherein the Hon'ble Supreme Court has observed as follows:

“14. The perusal of the materials placed by the plaintiff which are intended to be marked as bills have already been mentioned by the plaintiff in its statement of account but the original bills have not been placed on record by the plaintiff till the date of filing of such application. It is further seen that during the entire trial, those documents have remained in exclusive possession of the plaintiff but for the reasons known to it, still the plaintiff has not placed these bills on record. In such circumstance, as rightly observed by the trial court at this belated stage and that too after the conclusion of the evidence and final arguments and after reserving the matter for pronouncement of the judgment, we are of the view that the plaintiff cannot be permitted to file such applications to fill the lacunae in its pleadings and evidence led by him. As rightly observed by the trial court, there is no acceptable reason or cause which has been shown by the plaintiff as to why these documents were not placed on record by the plaintiff during the entire trial. Unfortunately, the High Court taking note of the words “at any stage” occurring in Order 18 Rule 17 casually set aside the order of the trial court, allowed those applications and permitted the plaintiff to place on record certain bills and also granted permission to recall PW 1 to prove those bills. Though power under Section 151 can be exercised if ends of justice so warrant and to prevent abuse of process of court and court can exercise its



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discretion to permit reopening of evidence or recalling of witness for further examination/cross-examination after evidence led by the parties, in the light of the information as shown in the order of the trial court, namely, those documents were very well available throughout the trial, we are of the view that even by exercise of Section 151 CPC, the plaintiff cannot be permitted.

15. After change of various provisions by way of amendment in CPC, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and the judgment was reserved and only thereafter, in order to improve its 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 CPC”

4.2. In the case of **Ram Rati -vs- Mange Ram** reported in (2016) 11

SCC 296 wherein the Hon'ble Supreme Court has observed as follows:

“11. The respondent filed the application under Rule 17 read with Section 151 CPC invoking the inherent powers of the court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the court to clarify any position or doubt, and the court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the court may permit the parties to assist the court by examining the witness for the purpose of clarification



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required or permitted by the court. 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.

12. In Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate [Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198], this principle has been summarised at paras 25, 28 and 29 : (SCC pp. 414-15)

“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.”

16. Some good guidance on invocation of Section 151 CPC to reopen an evidence or production of fresh evidence is also available in K.K. Velusamy [K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] . To quote para 14 : (SCC p. 284)

“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 [Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate, (2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198] and K.K. Velusamy [K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275 : (2011) 3 SCC (Civ) 665] have also found affirmation by this Court in Bagai Construction v. Gupta Building Material Store [Bagai Construction v. Gupta Building Material Store, (2013) 14 SCC 1 : (2014) 2 SCC (Civ) 382].

18.The settled legal position under Order 18 Rule 17 read with Section 151 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.”

4.3.In the case of **Gayathri -vs- M.Girish** reported in **(2016) 14 SCC**

142 wherein the Hon'ble Supreme Court has held as follows:

“8.In this context, we may fruitfully refer to Bagai Construction v. Gupta Building Material Store [Bagai Construction v. Gupta Building Material Store, (2013) 14 SCC 1 : (2014) 2 SCC (Civ) 382]. In the said case the Court had expressed its concern about the order passed by the High Court whereby it had allowed the application preferred under Order 18 Rule 17 that was rejected by the trial court on the ground that there was no acceptable reason to entertain the prayer. Be it stated, this Court set aside the order passed by the High Court. In the said case, it has also



been held that it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. That apart, it has also been held that the courts should constantly endeavour to follow such a time schedule so that the purpose of amendments brought in the Code of Civil Procedure are not defeated. Painfully, the Court observed : (SCC p. 7, para 15)

“15. ... In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered. We are satisfied that the plaintiff has filed those two applications before the trial court in order to overcome the lacunae in the plaint, pleadings and evidence. It is not the case of the plaintiff that it was not given adequate opportunity. In fact, the materials placed show that the plaintiff has filed both the applications after more than sufficient opportunity had been granted to it to prove its case. During the entire trial, those documents have remained in exclusive possession of the plaintiff, still the plaintiff has not placed those bills on record. It further shows that final arguments were heard on a number of times and judgment was reserved and only thereafter, in order to improve its 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 CPC.”

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 petitioner-defendant 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 hereinabove 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



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ethics decries such practice. It is because such acts are against the majesty of law.

10. In this context, we may profitably reproduce a passage from Shiv Cotex v. Tirgun Auto Plast (P) Ltd. [Shiv Cotex v. Tirgun Auto Plast (P) Ltd., (2011) 9 SCC 678 : (2011) 4 SCC (Civ) 817] wherein it has been stated that : (SCC p. 682, para 15)

“15. It is sad, but true, that the litigants seek—and the courts grant—adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation.”

The Court has further laid down that : (SCC p. 682, para 15)

“15. ... It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.”

11. In Noor Mohammed v. Jethanand [Noor Mohammed v. Jethanand, (2013) 5 SCC 202 : (2013) 2 SCC (Civ) 754] commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say : (SCC p. 215, para 28)

“28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.”

And, again : (SCC p. 216, para 31)



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“31. Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the “élan vital” of our system.”

12. In the case at hand, it can indubitably be stated that the petitioner-defendant 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 the trial courts.

13. In view of the aforesaid analysis, we decline to entertain the special leave petition and dismiss it with costs which is assessed at Rs 50,000 (Rupees fifty thousand only). The costs shall be paid to the State Legal Services Authority, Karnataka. The said amount shall be deposited before the trial court within eight weeks hence, which shall do the needful to transfer it to the State Legal Services Authority. If the amount is not deposited, the right of defence to examine its witnesses shall stand foreclosed.”

5.It is the contention of the learned Counsel for the fourth Respondent that the Petitioner as Plaintiff was not diligent in examining the witnesses. Since the Petitioner had filed Petition only at the stage of arguments, the learned District Munsif, Dharapuram, had dismissed the Petition rightly stating that it is a petition filed with ulterior motive to protract the proceedings. It is the further submission of the learned Counsel for the fourth Respondent that if this Civil Revision Petition is allowed, it will defeat the



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purpose of the amendment brought about in the year 2002 to the Code of Civil Procedure to encourage disposal of the Civil cases within specified time. Otherwise the parties will be reopening the case at their whims and fancies. Therefore, the trial will be prolonged.

6. On consideration of the submission of the learned Counsel on either side and on perusal of the documents filed along with this Petition, it is found that here it is the Plaintiff, who is interested in getting a decree in his favour and by protracting the proceedings the Plaintiff is not benefited. It is his contention that he had entered into a sale agreement with the third Defendant in the suit in the year 2003. Based on the sale agreement, only in the year 2006, a sale was executed in his favour. Therefore, the Plaintiff had filed the suit for declaration of title to the suit property and for permanent injunction against Defendants 1 and 2.

7. When the trial Court had *suo motu* closed the Plaintiff's evidence, the Plaintiff had filed Petition for reopening the Plaintiff's evidence after closing of Defendant's evidence and before the arguments. He had rightly



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filed the Petition to reopen the case for the Plaintiff so that it will meet the ends of justice. As he has to take the trial proceedings to its logical conclusion, he wanted to examine the witness, who was the witness to the sale agreement, regarding execution of the sale agreement prior to the sale deed as proof of the claim in the plaint. That material fact had been ignored by the learned District Munsif, Dharapuram, based on the objection by the learned Counsel for the Defendants. Therefore, the dismissal of the Petition in I.A.No.739 of 2021 will result in miscarriage of justice before rendering judgment in the trial. Therefore, the filing of this Civil Revision Petition under Articles 227 of the Constitution of India is found justified to meet the ends of justice.

8.The ruling in the case of ***Gayathri -vs- M.Girish*** reported in (2016) ***14 SCC 142*** relied by the learned Counsel for the fourth Respondent is in a different context where the Defendant had sought adjournment, plaintiff repeatedly filed Petition after Petition under Section 151 CPC to delay the trial which is not applicable to the facts of this Case. Here the Plaintiff is eager to get a decree from the Court and by delaying the trial he is in no way benefited. Therefore, the same ruling will not be applicable to the facts of this



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case. Hence, the same is rejected.

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9.The ruling in the case of ***Ram Rati -vs- Mange Ram reported in (2016) 11 SCC 296*** is with regard to recall of some witnesses exercising the powers of the Court under Order 18, Rule 17 and Section 151 C.P.C. to recall the plaintiff witness P.W-1. Here it is the Plaintiff witness, who is sought to be re-called. It is the case of the Plaintiff to reopen the plaintiff's evidence to summon the witness to the sale agreement of the year 2003 which fact was ignored by the learned District Munsif, Dharapuram. Therefore, the rulings reported in ***Ram Rati -vs- Mange Ram*** reported in ***(2016) 11 SCC 296*** will not be helpful to the facts of this case. Hence, the above rulings relied by the learned Counsel for the fourth Respondent to uphold the order of the learned District Munsif, Dharmapuri, is rejected. The decision in the case of ***Bagai Construction -vs- Gupta Building Material Store*** reported in ***(2013) 14 SCC 1*** where the facts are different. It was a case wherein the Petitioner by filing Petitioner under Order 18, Rule 17 of CPC seeking to recall witnesses who were already examined and cross-examined stating recalling of PW-1 to file additional documents which was treated as filling up the lacuna by the



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trial Court. Here it is not the case. Here it is the case of the Petitioner as Plaintiff in O.S.No.531 of 2007 who is the Petitioner in I.A.No.739 of 2021 that the Trial Court had *suo motu* closed the evidence of Plaintiff as P.W-1. The material fact regarding the sale that was executed and registered in 2006 was in continuation of the sale agreement executed in the year 2003. Therefore, the witness in the sale agreement of the year 2003 had to be examined to prove the contention of the Plaintiff in the trial Court before the argument the Plaintiff had sought to reopen the Plaintiff evidence. Therefore, the contention of the Petitioner in this Civil Revision Petition that prejudice will be caused to the Plaintiff and it will result in miscarriage of justice is found reasonable and acceptable. Therefore, the ruling cited by the learned Counsel for the fourth Respondent to confirm the order of the learned District Munsif, Dharapuram in dismissing the application in I.A.No.739 of 2021 by the Plaintiff as belated and as dilatory tactics to delay the trial is found to be unacceptable and unreasonable. By delaying the trial, the Plaintiff is in no way benefited by delaying the trial proceedings. He is eager to get a decree from the Court in his favour. Therefore, the reliance placed by the learned Counsel for the fourth Respondent reported in **(2016) 11 SCC 296, (2013)**



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14 SCC 1 and (2016) 11 SCC 296 are rejected as not applicable to the facts and circumstances of this case.

10. In the light of the above discussion, exercising the power of this Court under Article 227 of the Constitution of India to prevent the miscarriage of justice, this Civil Revision Petition is to be allowed.

In the result, **this Civil Revision Petition is allowed.**

The order passed by the learned District Munsif, Dharapuram, Thirupur District in I.A.No.739 of 2021 in O.S.No.531 of 2007 is set aside. The learned District Munsif, Dharapuram, Thirupur District is directed to dispose of the suit in O.S.No.531 of 2007 within a reasonable period of three months from the date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

SRM

Index : Yes / No

Internet : Yes / No

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To

The District Munsif,
Dharapuram,
Thirupur District



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
C.R.P.No.2203 of 2021**

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