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C.R.P.No.2206 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.2206 of 2021

and

C.M.P.Nos.16711 of 2021

Kanniyathal : Petitioner/Petitioner/Plaintiff
in O.S.No.527 of 2007

Vs.

1.Govindasamy : 1st Respondents/1st Respondent/
Plaintiff in O.S.No.531 of 2007/
7th Defendant in O.S.No.527 of 2007

2.Muthusamy
3.Subbathal : 2nd and 3rd Respondents/Respondents 2 & 3/
Defendants in O.S.No.531 of 2007/
1st and 3rd Defendants in O.S.No.527 of 2007
4.C.S.Natarajan : 4th Respondent/4th Respondent/4th Defendant in
O.S.No.531 of 2007

5.Marimuthu
6.Veluchamy
7.Subramaniam
8.Ramalingam : Respondents 5 to 8/Respondents 5 to 8/
2, 4 to 6th Defendants in O.S.No.527 of 2007

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.740 of 2021 in O.S.No.531 of 2007 on the file



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of learned District Munsif, Dharapuram and allow the Civil Revision Petition.

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For Petitioner : Mr.S.Saravanan

For Respondent 5 : Mr.N.Ponraj

ORDER

This Civil Revision Petition had been filed to set aside the fair and decreetal order dated 02.09.2021 passed in I.A.No.740 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 Petitioner is the Plaintiff in O.S.No.527 of 2007. The Petitioner had already examined sufficient number of witnesses on her side. In order to prove that the Petitioner is in possession and enjoyment of the suit properties by engaging in agricultural activities and grazing cattle, she had filed I.A.No.740 of 2021 seeking to examine the Village Administrative Officer and to mark the Revenue records viz., Adangal, Chitta, etc. The Defendant in O.S.No.527 of 2007 resisted the same stating that the Petitioner/Plaintiff herself can produce Chitta, Patta, Adangal and other revenue records from the Revenue



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Department and there is no necessity to summon the Village Administrative Officer. The presence of the Village Administrative Officer is not necessary to mark Revenue Records which will be in the name of the owner of the land. Therefore, based on the objection of the Defendant in O.S.No.527 of 2007, the Petition in I.A.No.740 of 2021 was dismissed by the learned District Munisif, Dharapuram, Thirupur District as per the order dated 02.09.2021. Aggrieved by the same, the Plaintiff in O.S.No.527 of 2007 had approached this Court by invoking the powers of this Court under Article 227 of the Constitution of India.

2.1.In support of his contention, the learned Counsel for the Petitioner relied on the order of this Court made in C.R.P.(NPD) No.2974 of 2019 dated 24.11.2020. The relevant portion is extracted as under:

“6. The right to cross examination is a very valuable right and the Court must always endeavour to protect the said right. If a party fails to cross examine the witness and that failure results in closing of the evidence and if that party applies within a reasonable time for reopening and recalling of the witness, the Court has to exercise its discretion in favour of such party and only in cases where there is total negligence or callous indifference on the part of the parties in conducting trial, could the Court reject such a request. The trial Court had exercised its discretion in favour of the petitioner and allowed the application and I do not think such exercise of discretion can be interfered with, particularly exercise of the power under Article 227 of the Constitution of India. The revision therefore fails and it is accordingly dismissed. No costs. Consequently,



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connected miscellaneous petition is closed.

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7. The counsel for the petitioner would submit that DW1 is unwell and is bed ridden. The trial Court shall make necessary arrangements for cross examination of DW1 by appointing a Commissioner if it is deemed necessary.”

3.The learned Counsel for the fifth Respondent/2nd Defendant in O.S.No.527 of 2007 had by way of reply submitted that the order passed by the learned District Munsif, Dharapuram, is a well reasoned order warranting no interference by this Court. The Civil Revision Petition is filed without any basis and therefore, the Civil Revision Petition is liable to be dismissed.

4.In support of his contention, the learned Counsel for the fifth 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



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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 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



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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 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



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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



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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 adamantine 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 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)

“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.”

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5.It is the contention of the learned Counsel for the fifth Respondent that 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 fifth Respondent that if this Civil Revision Petition is allowed, it will defeat the 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 and thereby, 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 and the rulings relied on by the learned Counsel for the fifth Respondent, the order passed by the learned District Munsif, Dharapuram rejecting the Petition is found acceptable. In Civil cases, the fact of possession is to be proved by the Plaintiff through proper witnesses. When revenue records are necessary, they can be obtained from the Revenue Officials and it is permitted to be marked



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through the Plaintiff themselves. Here the attempt of the Plaintiff to examine the Village Administrative Officer as Plaintiff's witness was rejected. The observation by the learned District Munsif, Dharapuram that the Village Administrative Officer need not be examined to prove and to mark Patta, Chitta, Adangal and other revenue records is found justified. Therefore, the Civil Revision Petition has no merits and is liable to be dismissed.

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

The order dated 02.09.2021 passed in I.A.No.740 of 2021 in O.S.No.531 of 2007 by the learned District Munsif, Dharapuram, Thirupur District, is confirmed. 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.

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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.2206 of 2021**

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