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CRP(MD)Nos.1883 to 1885 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)Nos.1883 to 1885 of 2022
and
CMP(MD)No.8454 of 2022

1.S.Subramanian

2.S.Swaminathan

: Petitioners

Vs.

1.Jeyalakshmi

Rajamani Ammal (Died)

2.Thiagarajan

3.Padmavathi

: Respondents

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to call for records relating to the fair and decreetal order dated 11.07.2022 passed by the learned II Additional District Munsif, Tiruchirappalli, in I.A.Nos.10 to 12 of 2022, respectively, in O.S.No.378 of 2017 and set aside the same.

For Petitioners : Mr.H.Arumugam

For R.1 : Mr.S.K.Mani

[In all CRPs]



CRP(MD)Nos.1883 to 1885 of 2022

COMMON ORDER

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The petitioners are the defendants 3 & 4 in the suit in O.S.No.378 of 2017 pending before the II Additional District Munsif Court, Tiruchirappalli. The suit was filed by the first respondent / plaintiff for the relief of declaration and permanent injunction. Pending the suit, the first respondent has filed three interlocutory applications in I.A.Nos.10 to 12 of 2022 to reopen the case, to recall PW1 and to receive additional documents. The trial Court, by order dated 11.07.2022, allowed the applications and aggrieved over the same, the petitioners have moved the instant revision petitions.

2.Learned Counsel for the petitioners submitted that the first respondent has filed the interlocutory applications stating that she was under the impression that the documents could be marked through DW3 and that since he denied knowledge of the documents, she filed the applications. The trial Court, though gave a finding against the first respondent that she cannot keep quiet stating that the document would be marked by the defendant, has allowed the applications stating that mere marking of documents would not amount to any proof.



3.He further submitted that the first respondent has earlier filed a petition under Order 7 Rule 14 CPC, the same was allowed and documents were also received. Now, after the closure of evidence of both parties, she has filed these applications, again, which is not permissible in law, unless a satisfactory explanation is offered. The documents now sought to be marked were very well available with the first respondent and she has, in fact, produced those documents in yet another suit filed by her in O.S.No.151 of 2020 before the District Court, Tiruchirappalli. Therefore, the learned Counsel prayed for interference. He has also relied upon the decisions of the Hon'ble Supreme Court in ***Bagai Construction v. Gupta Building Material Store [(2013) 14 SCC 1]*** and this Court in ***S.Ramasamy v. Perumal and Others [2014 (3) CTC 518]***.

4.Learned Counsel for the first respondent / plaintiff, on the other hand, submitted that the documents were well within the knowledge of DW3 and therefore, the plaintiff thought that the documents could be marked through DW3 at the time of examination. However, DW3 has denied knowledge of the same and therefore, the plaintiff has immediately taken steps to mark those documents. He further submitted that mere marking of documents would not amount to proof and the petitioners / defendants can very well make their objections. He has also relied



upon the decision of the Hon'ble Supreme Court in ***Levaku Pedda Reddamma & Others v. Gottumukkala Venkata Subbamma & Another*** [Civil Appeal No.4096 of 2022, dated 17.05.2022], wherein, the Hon'ble Supreme Court has held as follows:-

“We find that the trial Court as well as the High Court have gravely erred in law in not permitting the defendants to produce documents, the relevance of which can be examined by the trial Court on the basis of the evidence to be led, but to deprive a party to the suit not to file documents even if there is some delay will lead to denial of justice.

It is well settled that rules of procedure are hand-maid of justice and, therefore, even if there is some delay, the trial Court should have imposed some costs rather than to decline the production of the documents itself.”

5.This Court paid it's anxious consideration to the rival submissions and also to the materials placed on record.

6.The suit was filed by the first respondent / plaintiff for the relief of declaration and permanent injunction. The trial has commenced and the evidence has also been completed. At this juncture, the plaintiff moved the interlocutory



applications to reopen the case, recall PW1 and to mark certain documents. The documents sought to be marked are as follows:-

1. Registered Will bearing Document No.123/1999 executed by Sangilimuthu Chettiar, dated 09.09.1999;
2. Registered Will bearing Document No.123/1999 executed by Sangilimuthu Chettiar, dated 09.02.2000;
3. Unregistered Will said to have been executed by Sangilimuthu Chettiar, dated 17.04.2006;
4. Compromise decree passed in O.S.No.213/2006 by the learned II Additional Subordinate Judge, Tiruchirappalli, dated 07.10.2020; and
5. First Information Report registered by Thillai Nagar Police Station against the petitioner and her sons, dated 10.04.2021.

7.Perusal of record shows that in IA.Nos.10 & 11 of 2022, the first respondent has averred in her affidavit as follows:-

“3.I humbly submit that we could not file the documents earlier, because, I was believing that the documents could be marked through the respondent's witness DW3 Swaminathan. He had stated in the cross examination that he has no knowledge. So, the said documents could not be marked in the cross examination. These documents are relevant for



consideration and they have to be marked as exhibits on my side.”

Whereas, in IA.No.12 of 2022, the first respondent has averred in her affidavit as follows:-

“3.I humbly submit that certain documents which are detailed in the accompanying petition were not available with me at the time of filing of the suit. Hence I could not file the same at the time of filing of the suit. Now only I am able to the documents detailed in the accompanying petition. They have to be produced by me as documents on my side.”

8.On one hand, the first respondent claimed that she was under the impression that the documents would be marked through DW3, but since DW3 denied knowledge, she has filed these applications. But, on the other hand, she claimed that since the documents were not available with her at the time of filing of the suit, she could not produce it. It is not known as to why the first respondent / plaintiff has taken two different stands.

9.Be that as it may, the fact remains that in yet another suit in O.S.No.151 of 2020 filed by the first respondent / plaintiff on 02.08.2020 before the District Court, Tiruchirappalli, she has produced certain documents along with the suit,



including the document nos.1 to 4, that were now sought to be marked. The present interlocutory applications were filed by the first respondent / plaintiff on 07.03.2022. During the course of arguments, both before the trial Court as well as before this Court, the first respondent / plaintiff took a stand that she was under the impression that the documents could be marked through DW3, but, since he denied knowledge, she moved these interlocutory applications. This reasoning offered by the first respondent / plaintiff is not acceptable inasmuch as excepting the fifth document [FIR], the remaining document nos.1 to 4 were very much available with her throughout the entire trial and nothing prevented her from producing these documents at that point of time itself. The trial Court, though gave a finding that the reasoning is not acceptable, has allowed the applications.

10.The Hon'ble Supreme Court in ***Vadiraj Naggappa Vernekar v. Sharad Chand Prabhakar Gogate*** [2009 (4) MLJ 288] has held that the provisions under Order 18 Rule 17 CPC are not intended to be used to fill up omissions / gaps in the evidence of a witness, who has already been examined. The relevant portion from the said decision is extracted as follows:-

“16.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. As indicated by the learned Single Judge, the evidence now being sought to be introduced by recalling the witness in question, was available at the time when the affidavit of evidence of the witness was prepared and affirmed. It is not as if certain new facts have been discovered subsequently which were not within the knowledge of the applicant when the affidavit evidence was prepared.”

11. *In Re K.K.Velusamy v. N.Palanisamy* [(2011) 11 SCC 275], the Hon'ble Supreme Court has held as follows:-

“19. We may add a word of caution. The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate



costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

12. In **Bagai Construction's** case (supra) relied upon by the petitioners, the Hon'ble Supreme Court has held as follows:-

“11. ... 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 XVIII 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 the 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 of CPC, the plaintiff cannot be permitted.”



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13. The fact remains that excepting the fifth document [FIR], the remaining document nos.1 to 4 were very much available with the first respondent throughout the entire trial and nothing prevented her from producing these documents at that point of time itself. Therefore, in view of the decisions referred to supra, this Court is inclined to interfere with the order impugned, insofar as document nos.1 to 4 are concerned. Since it is not proved that the document no.5 / First Information Report was available with the first respondent at the time of trial itself, this Court is inclined to allow the first respondent to mark the fifth document alone.

14. Accordingly, the order impugned dated 11.07.2022 is set aside insofar as permitting the first respondent / plaintiff to mark the document nos.1 to 4 are concerned. The other portions of the order are sustained for the purpose of reopening the case, recalling PW1 and for marking the document no.5 / FIR.

15. Considering the fact that the suit is of the year 2017, the evidence has already been completed and that the interlocutory applications are allowed for the



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limited purpose of recalling PW1 to mark the document no.5 / FIR, the trial Court shall endeavor to expedite the trial and shall conclude the proceedings, as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

In the result, these civil revision petitions stand partly allowed. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
gk

16.09.2022

To

The II Additional District Munsif,
Tiruchirappalli.



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B.PUGALENDHI, J.

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