



C.R.P.Nos.1153 & 1154 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2023

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

C.R.P.Nos.1153 & 1154 of 2019 and
C.M.P.No.7424 of 2019

Baramesvary

Petitioner in
.. both C.R.Ps

vs

1. K.Murugesan
2. Radha @ Rajeswari

Respondents in
.. both C.R.Ps

Prayer in C.R.P.No.1153 of 2019: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 11.12.2018 in I.A.No.692 of 2018 in O.S.No.75 of 2015 on the file of the II Additional District Judge at Pondicherry;

Prayer in C.R.P.No.1154 of 2019: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decree dated 11.12.2018 in I.A.No.692 of 2018 in O.S.No.75 of 2015 on the file of the II Additional District Judge at Pondicherry.



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For Petitioner : Mr.D.Nandhagopal
for Mr.R.Rajarajan

For Respondent 1 : M/s.G.Sumitra

For Respondent 2 : No Appearance

COMMON ORDER

These civil revision petitions have been filed against the fair and decretal order passed in I.A.Nos.691 of 2018 and 692 of 2018 in O.S.No.75 of 2015 by the learned II Additional District Judge at Puducherry dated 11.12.2018, allowing the applications filed for reopening and recalling D.W.2 and D.W.3 for further cross examination.

2. The petitioner / plaintiff filed a suit seeking for the relief of partition and for allotment of one third share in the suit property. The second defendant took a stand that by virtue of a Will executed in his favour, he is entitled absolutely to the entire suit property. The pleadings were



completed, issues were framed and the parties went for trial.

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3. The evidence on the side of the defendant was completed and the case was at the stage of final arguments. At that stage, applications were filed in I.A.No.691 of 2018 and 692 of 2018 to reopen and to recall D.W.2 and D.W.3 for further cross examination. These applications were allowed by the Court below through order dated 11.12.2018. Aggrieved by the same, these civil revision petitions have been filed before this Court.

4. Heard Mr.D.Nandhagopal for the petitioner and Ms.G.Sumitra for the first respondent. There is no appearance for the second respondent either in-person or through counsel.

5. It is clear from the records that D.W.2 and D.W.3 were sought to be examined by the second defendant in order to prove the Will dated 11.07.1996. Even on an earlier occasion, a petition was filed for recalling D.W.2 and D.W.3 in I.A.No.597 of 2018 and the same was allowed by



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order dated 24.07.2018 and these two witnesses were cross examined.

Thereafter, the matter was posted for arguments. Once again, applications have been filed by the second defendant to reopen and recall D.W.2 and D.W. for further cross examination.

6. As rightly contended by the learned counsel for the petitioner, the power to recall witnesses should not be exercised in a routine fashion and it cannot be granted for a mere asking. The second defendant had already examined D.W.2 and D.W.3 and one more opportunity was given to recall D.W.2 and D.W.3 and they were further examined. The second defendant has thereafter proceeded to file yet another application to reopen and recall D.W.2 and D.W.3. The Court below has allowed these applications in a mechanical fashion by merely stating that the defendant has to establish his case. If such applications are repeatedly entertained, the same will unnecessarily delay the disposal of the suit. This is more so since the second defendant was given an opportunity twice to examine D.W.2 and D.W.3 and the second defendant cannot be allowed to again and again recall the same



witnesses.

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7. At this juncture, it will be relevant to take note of the judgment that was cited by the learned counsel for the petitioner in ***K.K.Velusamy vs N.Palaanisamy*** in ***C.A.Nos.2795 to 2796 of 2011*** dated 30.03.2011. The relevant portion in the judgment is extracted hereunder:

“16. 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 witnessess 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. If the application is allowed and the evidence is permitted and ultimately the court finds that evidence was not genuine or relevant and did not warrant the reopening of the case recalling the witnessess, it can be made a ground for awarding exemplary costs apart from ordering prosecution if it involves fabrication of evidence. If the party had an opportunity to produce such evidence earlier but did not do so or if the evidence already led is clear and unambiguous, or if it comes to the conclusion that the object of the application is merely to protract the proceedings , the court should reject the application. If the evidence sought to be produced is an electronic record, the court may also listen to the recording before granting or rejecting the application.”



8. It is clear from the above that recalling witnesses cannot be done in a routine fashion and the party must make out a case as to why the witnesses are being recalled in spite of there being an opportunity for the party to examine them when they were present before the Court. This judgment squarely applies to the facts of the present case.

9. In the considered view of this Court, the fair and decretal order passed by the Court below in I.A.Nos.691 of 2018 and 692 of 2018 suffers from illegality and infirmity and the same requires the interference of this Court. As a consequence, the fair and decretal order passed in I.A.Nos.691 of 2018 and 692 of 2018 by the learned II Additional District Judge at Puducherry, dated 11.12.2018 is hereby set aside.

10. In the result, both the civil revision petitions stand allowed and the Court below is directed to complete the proceedings in O.S.No.75 of 2015 within a period of two months from the date of receipt of a web copy of this



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order and report compliance. Consequently, the connected miscellaneous petition is closed. There will be no order as to costs.

12.01.2023

Speaking Order/Non-Speaking Order.

Internet : Yes/No.

Index: Yes/No.

Neutral Citation: Yes/No
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To

1.The II Additional District Judge, Pondicherry.



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N.ANAND VENKATESH, J.
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