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*Application Nos.2831 and 2832 of
in C.S.No.66 of*



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Application Nos.2831 and 2832 of 2023
in C.S.No.66 of 2013

1.M/s.Radha Exports (India) Pvt. Ltd.,
Rep. by its Managing Director,
M.Krishnan,
'G' 2nd Floor, 12, State Bank Street,
Mount Road, Chennai - 600 006.

2.M.Krishnan

3.Radha Gouri

...

Applicants /
Defendants
[in both applications]

versus

1.K.P.Jayaram

2.Shoba Jayaram,

W/o.K.P.Jayaram,

Rep. by her husband Power Agent K.P.Jayaram,

(POA dt.21.11.2012, in Adj No.4/2013 - SRO, Anna Nagar)

Both permanent residents of

194, Jalan Rahman Merur,

Selangore, Malaysia 417850

and now the 1st respondent / 1st plaintiff

residing at AG-13, 4th Avenue,

Santhi Colony, Anna Nagar,

Chennai - 600 040.

...

Respondents /
Plaintiffs
[in both applications]



PRAYER in A.No.2831 of 2023 : Application filed under Order XIV Rule 8 of the Original Side Rules read with Section 151 of Code of Civil Procedure, praying to re-open the evidence of the plaintiffs' side.

PRAYER in A.No.2832 of 2023 : Application filed under Order XIV Rule 8 of the Original Side Rules read with Order XVIII Rule 17 of Code of Civil Procedure, praying to recall P.W.1 namely K.P.Jayaram for further cross-examination pending disposal of the suit.

For Applicants : M/s.K.V.Babu
[in both applications] for M/s.K.R.B.Dhaaranee

For Respondents : M/s.T.V.Vineethkumar
[in both applications]

COMMON ORDER

These applications have been filed to reopen and to recast P.W.1 for further cross-examination. The applicants are the defendants.

2. Heard the learned counsels for the applicants / defendants and respondents / plaintiffs and perused the materials available on record.

3. The respondents / plaintiffs have filed the suit for declaration and recovery of possession in respect of the suit property and also to declare the sale deed dated 06.07.2007 as null and void.



4. The learned counsel for the applicants / defendants submitted that the suit filed by the plaintiffs is a frivolous one; the plaintiffs have stated that they had the knowledge about the sale by the power agent in favour of the first applicant only in May 2012 and it is false; the power agent is none other than the father of the second respondent / second plaintiff and he was a retired Sub Registrar; the respondents have got knowledge about the sale through the power agent; even though the respondents / plaintiffs had the knowledge in the year 2012, the suit for declaration has been filed only in the year 2013 which is barred by limitation.

5. Upon completion of the pleadings, on 20.08.2014, this Court has framed the following issues:-

- i. *Whether the suit filed by the plaintiffs is barred by limitation ?*
- ii. *Whether the sale deed dated 06.07.2007 registered as document No.2558/2007 is valid and supported by consideration as mentioned in the sale deed ?*
- iii. *Whether the sale deed dated 06.07.2007 and registered as document No.2558 of 2007 before the Sub-Registrar, Kodambakkam executed by the plaintiffs through their Power*



Agent in favour of the defendants has been obtained through fraud or coercion entitling the plaintiffs to seek a declaration that the said sale deed is null and void and enforceable in law ?

- iv. Whether the plaintiff is able to substantiate the statement of accounts showing the circuitous transactions by the defendants with respect to the sale of the schedule property ?*
- v. Whether the 1st plaintiff father-in-law and 2nd plaintiff father late N.Sukumaran Nair who was ailing from acute cancer is aware of the sale deed or is he in a physical and mental state of mind to execute any document ?*
- vi. To what other reliefs the plaintiffs are entitled to ?*

6. Later on an application filed by the applicants / defendants in

A.No.5459 of 2022, on 15.12.2022, the issues were recast as under:-

- i. Whether the suit filed by the plaintiff is not barred by limitation?*
- ii. Whether the sale deed dated 06.07.2007 registered as document No.2558/2007 is not valid and is not supported by consideration as mentioned in the sale deed ?*

7. The learned counsel for the applicants engaged a new counsel and only through them the defendants had filed the above said application



for recasting the issues 1 and 2. In view of the reframed issues, it is necessary for the applicants / defendants to recall P.W.1 for further cross examination.

8. The learned counsel for the respondents filed counter and stated that P.W.1 has been subjected to a lengthy cross examination and all the witnesses were cross examined and the trial itself was over by 2018. The defendants are in the habit of changing the counsel just in order to delay the proceedings. The applications filed by the applicants to recast the issues was allowed on 15.12.2022 and thereafter also P.W.1's cross was continuing. Now in the pretext of filing these applications, the applicants / defendants has gained further time and it is a thorough abuse of process of law. Reframing the issues did not bring any new issues. There is no need to examine P.W.1 to clarify Ex.P.10 and cross examination has already been done in respect of Ex.P.10. The reasons stated in the affidavit of the applicants to recall P.W.1 is not acceptable and hence, these applications should be dismissed.

9. The respondents / plaintiffs have filed the suit seeking various



reliefs including the relief of declaration in respect of the sale deed dated 06.07.2007 executed by the second respondent's father in his capacity as power agent in favour of the first defendant. Originally Issue No.1 was *"Whether the suit filed by the plaintiffs is barred by limitation ?"*. The said issue got recast as *"Whether the suit filed by the plaintiffs is not barred by limitation ?"*. Originally Issue No.2 was framed as *"Whether the sale deed dated 06.07.2007 registered as document No.2558/2007 is valid and supported by consideration as mentioned in the sale deed ?"* The said issue got reframed as *"Whether the sale deed dated 06.07.2007 registered as document No.2558/2007 is not valid and is not supported by consideration as mentioned in the sale deed ?"*.

10. The effect of recasting the Issue Nos.1 and 2 would show that the Court has fixed the burden upon the plaintiffs to prove their case that it is not barred by limitation and that the sale deed dated 06.07.2007 is not valid and not supported by consideration. By recasting the issues, the initial burden is rightly fixed on the plaintiffs and not upon the defendants. Chief of P.W.1 was conducted on 27.02.2017 and 28.02.2017 and thereafter he



was cross examined on various dates i.e. on 08.12.2017, 12.12.2017, 19.12.2017, 05.01.2018, 08.01.2018.

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11. The cross examination of P.W.1 is seen to be very exhaustive and goes to several pages. The first plaintiff who was examined as P.W.1 was kept in the box for nearly 5 hearings only for cross examination. So far as the Issue No.1 is concerned, it is a mixed question of law and fact. Again the plaintiffs have to prove that they had the knowledge about the impugned sale deed only during May 2012. After having cross examined P.W.1 at length in every aspect about the limitation and validity of the sale deed and supported by consideration etc. the defendants once again intends to cross examine P.W.1 on the very same aspects. Just because the defendants had changed their counsel they cannot take liberty of recalling the witnesses repeatedly after availing more than sufficient opportunity to cross examine P.W.1.

12. The learned counsel for the plaintiffs claimed that the witness can be recalled at any stage in the interest of justice. There is no disagreement on the point that the witness can be recalled at any time, but that should be only for any valid reasons. Even though the defendants have claimed that the necessity for further cross examination of P.W.1 has arisen



due to reframing of issues, the burden is put on the plaintiffs and hence there is no justification for the defendants to file applications to recall P.W.1 and to further cross examine him.

13. As stated already, P.W.1 has been subjected to a very lengthy cross examination. If P.W.1 is further recalled and subjected to further cross examination that would only cause harassment to the witness, who had already come for 5 hearings and deposed evidence within a span of two months. Hence, it is ideal for the defendants to co-operate for the early completion of the trial in the interest of justice.

14. Hence the applications in A.Nos.2831 and 2832 of 2023 are dismissed.

25.07.2023

Speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Application Nos.2831 and 2832 of 2023
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R.N.MANJULA, J.

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Pre-Delivery Common Order made in
Application Nos.2831 and 2832 of 2023
in C.S.No.66 of 2013

25.07.2023