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C.R.P. Nos.3232 and 3226 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition Nos.3226 and 3232 of 2023 &
C.M.P.Nos.19902 and 19922 of 2023**

Sreyas Sripal

...Petitioner in both the petitions

Vs.

1. Hema
2. Dr.Kamliee
3. The Sub- Registrar,
T.Nagar,
Chennai 600 017

...Respondents in both the petitions

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 27.03.2023 in I.A.Nos.4 and 5 of 2023 in O.S.No.789 of 2015 on the file of XII Assistant City Civil Court, Chennai respectively.

For Petitioner : Mr.K.Suresh Babu

For Respondents : Mr.Anish Gopi for
M/s P.B.Ramanujam Associates

COMMON ORDER

Since the issues involved in both the petitions and the parties are one and the same, they are taken up together and a common order is being passed.



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2. The present petitions have been filed to set aside the fair and decreetal order dated 27.03.2023 in I.A.Nos.4 and 5 of 2023 in O.S.No.789 of 2015 on the file of XII Assistant City Civil Court, Chennai respectively.

3. The brief facts of the case are as follows:-

Originally the suit has been filed by the petitioner herein for a declaration and for a permanent injunction restraining the respondents / Defendants, theirmen, agents, or anybody claiming under or through them from alienating or encumbering or otherwise dealing with the schedule mentioned property covered under the Settlement Deed; and for cost. Pending suit, the petitioner has filed I.A.Nos.4 and 5 of 2022 before the court below under Order 18 Rule 17 and Section 151 CPC respectively to recall and reopen the P.W.1 evidence. The trial court by its order dated 27.03.2023 had dismissed the said I.As, hence this present Revision.

4. The learned counsel for the petitioner would submit that the petitioner is the plaintiff in the suit. The suit was initially posted on 12.03.2018 for cross-examination of P.W.1, on that day, when the petitioner was present in the court, he received a phone call stating that his mother was not feeling well. Hence, he left the court and proceeded to Delhi immediately to take care of his mother. Subsequently, the trial court



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had directed the petitioner to appear before the court on 20.03.2018. Even on that day the petitioner was unable to appear before the court hence the trial court had closed the P.W.1 evidence. Subsequently, on 27.03.2018, the petitioner filed a petition to recall and reopen P.W.1 evidence and the same was allowed with cost. The suit was listed on 12.04.2018 and 18.04.2018. Even on those dates, the petitioner did not appear before the court due to the illness of his mother. The petitioner also filed an application before the court below for extension of time but the same was dismissed. Subsequently, on 06.06.2018 the petitioner filed another petition to recall and reopen PW1 evidence and the same was allowed with cost. Even during the said occasions the petitioner did not appear and the said applications were dismissed.

5. The learned counsel for the petitioner also submits that the finding of the Trial Court that there is no necessity for the respondents / defendants to cross examine P.W.1, further as it was partly done, is patently erroneous since no such statement or endorsement was made by the respondents / defendants.

6. That apart, the learned counsel for the petitioner also contends that the respondents / defendants have filed an application to eschew the evidence of P.W.1, which would cause grave prejudice to the



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Petitioner/Plaintiff. The petitioner / plaintiff/ PW1 was residing at New Delhi along with his aged widowed mother and he could not appear before the Trial Court at Chennai on 18.04.2018 and despite producing the medical certificate of his mother, the Trial Court erroneously dismissed the application, thereby pleaded to allow the present petition.

7. On the other hand the learned counsel for the respondents would submit that sufficient opportunities were given to the petitioner to let-in his evidence. When the suit was posted for respondents / defendants' cross examination, the petitioner filed a petition to reopen and recall evidence that too for the third time. The petitioner was already cross examined by the respondents. The petitions have been filed by the petitioner only to fill up the lacuna, therefore, the order passed by the Court below is legal and valid in eye of law and does not need any interference.

8. Heard the learned counsels on either side and perused the documents placed on record.

9. The Point now arise for consideration before this Court is “Whether the trial court was right in rejecting the application filed by the petitioner for recall and reopen PW1 evidence?”



10. It is relevant to note that Order 18 Rule 17 CPC, wherein it is reproduced as follows:-

“17. Court may recall and examine witness : -

The Court may, at any stage of suit, recall any witness who has been examined and may (subject to the law of evidence for the time being in force), put such questions to him as the Court thinks fit.”

11. It is true that it is a well settled proposition of law that the power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely on the request.

12. As far as the present case on hand is concerned, the petitioner's mother was suffering from some ailments and therefore, the petitioner had to leave to Delhi to take care of his mother. The petitioner had also produced medical records to that effect before the court below. It is the contention of the petitioner that the petitioner was partly cross-examined by the respondents / defendants and they had filed a petition to eschew the evidence of P.W.1, if that is done the petitioner would be put into great hardship.

13. Taking into consideration of the above said facts and circumstances of the present case and coupled with the fact that the petitioner's mother was suffering from some ailments and that the petitioner



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had been to Delhi to take care of his mother and that the petitioner had also produced medical records to that effect before the court below, this Court is of the view that the petitioner can be afforded one more opportunity to recall and reopen the P.W.1., evidence, as a last chance, on condition that the petitioner shall pay a sum of Rs.10,000/- [Rupees Ten thousand only] to the respondents 1 and 2 [each Rs.5,000/-] within a period of two weeks from today, in the event of failure to deposit the said amount, the present petition shall stand automatically dismissed without further reference to this Court. Further, the court below is directed to conclude the evidence of P.W.1, within a period of one week from the date of commencement of the evidence and the parties are directed to complete the evidence within a period of one week from the date of commencing the evidence and the adjournment shall not be granted on any score.

In view of the above, the present Revisions are allowed and the order passed in I.A.Nos.4 and 5 of 2023 dated 27.03.2023 are set aside. Consequently, connected miscellaneous petitions are closed. No costs.

16.11.2023

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

<https://www.mhc.tn.gov.in/judis>



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To

1. The Subordinate Judge,
Madurantakam
2. The Rent Controller / District Munsif,
Madurantakam.



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V.BHAVANI SUBBAROYAN J.

ssd

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