



C.R.P.Nos.2578 and 2591 of 2023 &
C.M.P. No.15934 of 2023 &
Caveat No.4121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2023

CORAM:

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

**C.R.P.Nos.2578 and 2591 of 2023 &
C.M.P.No.15934 of 2023 &
Caveat No.4121 of 2023**

- 1.Geetha Marman
2. S.Vijaya Rani
3. S.Savithri
4. S.Nalini

... Petitioners in both the petitions

Vs.

1. Dhanalakshmi
2. Vasantha
3. Ramanathan
4. Vishvanathan
5. The Tahsildar
Avinashi Taluk,
Thiruppur District
6. The Authorised Officer and
Special District Revenue Officer,
National Highway 47,
3, savarimuthu chetty street,
Red fields, Coimbatore – 45
7. The District Collector,
Tiruppur District,
Tiruppur
8. Uma devi

... Respondents in both the petitions

Civil Revision Petitions filed under Article 227 of Constitution of India
to set aside the order dated 28.06.2023 in I.A.Nos.448 and 449 of 2023 in
O.S.No.371 of 2010 passed by the learned District Munsif, Avinashi
respectively



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For Petitioners : Mr.N.Manoharan for
Mr.N.Ponraj

For Respondents : Mr.K.V.Muthu Visakan

COMMON ORDER

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

2. The present Revisions have been filed to set aside order dated 28.06.2023 in I.A.Nos.448 and 449 of 2023 in O.S.No.371 of 2010 passed by the learned District Munsif, Avinashi respectively.

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

(i) The petitioners, who are the plaintiffs have preferred O.S.No.371 of 2010 for permanent injunction and other consequential reliefs. The respondents / defendants filed written statement to the suit. Pending suit, the petitioners / plaintiffs initially preferred I.A.No.627 of 2017, to amend the pleadings and the trial court dismissed the said petition on 20.06.2017. The petitioners have preferred CRP No.3748 of 2017 to set aside the order dated 20.06.2017 and this Court allowed the said CRP on 29.09.2022.

(ii) Further, the petitioners / plaintiffs preferred I.A.Nos.59 and 80 of 2023 seeking to file the compromise decree obtained by the respondents /



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defendants in O.S.No.428 of 2000 and seeking permission to mark the xerox copy of the said decree and both the applications were dismissed on 18.02.2023.

(ii) The petitioners have filed I.A.Nos.448 and 449 of 2023 to reopen the case which stands posted on 30.03.2023 and to recall the evidence of D.W.1 for further cross examination. The said applications were dismissed on 28.06.2023. As against the same, the present Revision Petitions were filed by the petitioners/ plaintiffs.

4. The learned counsel for the petitioners would submit that the petitioners originally filed a suit for permanent injunction and after the filing of written statement by the respondents 1 to 4, the petitioners were constrained to file an application to amend the pleadings in plaint for including declaratory relief in I.A.No.627 of 2017, but the same was dismissed on 20.06.2017 as against which a revision was filed in CRP No.3748 of 2017 before this Court and the same was allowed on 29.09.2022. In such circumstances, after amendment of plaint, the burden of proof heavily lies on the petitioners. When the fact being so, the finding of the trial court does not sound reasonable and pleaded to dismiss the same by allowing the present revision petitions.



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5. Per contra, the learned counsel for the respondents reiterated the contentions put forth before the court below and further contends that the court below had rightly taken note of the facts and circumstances of the present case and thereby dismissed the petitions, therefore, pleaded to dismiss the petitions. Further, the petitioners with an ulterior motive came forward with the present petitions to drag on the case. The petitioners are careless and negligent, thereby pleaded to dismiss the Revision petitions.

5a. In reply, the learned counsel for the petitioners seek permission of this Court to mark Document 12, xerox copy of compromise decree passed in O.S.No.428 of 2000, [which was filed for partition], as per Section 63 of Indian Evidence Act.

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

7. Now, the Point that arises for consideration are:

“Whether the trial court was right in rejecting the applications filed by the petitioners under Order 18 Rule 17 read with Section 151 CPC”.

8. It is necessary to extract the provisions of Order 18 Rule 17 CPC,

which are reproduced hereinbelow:-



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“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.”

9. In Ram Rati vs. Mange Ram and Ors. (23.02.2016 - SC) the

Hon'ble Apex court held as follows:

Order 18 of Code of Civil Procedure deals with hearing of the suit and examination of witnesses. By an amendment introduced thereunder with effect from 01.02.1977, Rule 17A was introduced permitting production of evidence not previously known or which could not be produced despite due diligence. It appears, the amendment only caused unnecessary protraction of the litigation, and hence, the said provision was omitted by The Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002. However, Rule 17 was retained which reads as follows:

“17. Court may recall and examine witness.- The court may at any stage of a 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. The Respondent filed the application Under Rule 17 read with Section 151 of the Code of Civil Procedure 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.

In the case of K.K. Velusamy Vs. N. Palanisamy reported at

(2011) 11 SCC 275 the Hon'ble Supreme Court had discussed the

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power of the Court under Order 18 Rule 17 of CPC. It was held that this power is only for clarification i.e. to enable Court to clarify any issue or doubt, it may have in regard to evidence led by parties by recalling any witness so that the Court itself can put questions to such witness and elicit answers. The relevant paras 9, 10 and 19 read as under:

“9. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

10. Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo motu, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

xxx xxx

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.”



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10. From the above it is clear that Order 18 Rule 17 of the Code is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded. Order 18 Rule 17 is primarily a provision enabling the court to clarify any issue or doubt, by recalling any witness either suo moto, or at the request of any party, so that the court itself can put questions and elicit answers. Once a witness is recalled for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions.

11. In the present case on hand, on going through the order passed by the court below and on perusing the materials placed on record, it is seen that D.W.1 was cross examined in-part by the petitioners / plaintiffs on 18.09.2017, thereafter on 21.09.2017, the said D.W.1 was cross examined by the petitioners. Again on 17.11.2017, D.W.1 was cross-examined by the petitioners / plaintiffs, while so, it is clear that the petitioners have cross examined D.W.1, thrice. Further, when chief examination and cross examination were completed and exhibits were marked on either side and judgments were to be pronounced on 30.08.2023, after a period of five years, the petitioners / plaintiff, again has



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come up with the I.A.Nos.448 and 449 of 2023. Therefore, the court below, on 28.06.2023, dismissed the said petitions. That apart, earlier the petitioners have also preferred CRP No.3748 of 2017 and by order dated 29.09.2022, there was a direction to the court below to conduct and complete the trial within a period of three months after completing the procedures laid down and the same also could not be complied with, in view of the fact that the petitioners / plaintiffs are prolonging the matter by filing several petitions.

12. The above facts would clearly show that sufficient opportunities were given to the petitioners to cross examine D.W.1. The petitioners filed a petition to re-open evidence, after a period of five years. Therefore, this Court does not find any grounds / reasons warranting interference in the order passed by the court below. However, taking note of submission made by the learned counsel for the petitioner and in accordance with Section 63(2) of Indian Evidence Act, Doc.No.12, i.e., xerox copy of the compromise decree passed in O.S.No.428 of 2000 on the file of learned Subordinate Judge, Thiruppur shall be marked by the court below only after comparing the same with the certified copy to be produced by the petitioners, subject to proof and relevancy.



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In the result, the present Civil Revision Petitions are dismissed at the admission stage with the above direction. Consequently, connected miscellaneous petitions are closed. No costs.

23.08.2023

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

To

1. The District Munsif, Avinashi
2. The Subordinate Judge, Thiruppur



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V.BHAVANI SUBBAROYAN J.

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